GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

CORAM: Shri Juino De Souza : State Information Commissioner

Appeal No. 59/SIC/2011 / 682

Mr. Rony Dias,
H.No.2 Murida,
Cuncolim, Salcete, Goa ..... Appellant

v/s

1. Public Information Officer
   O/o Executive Engineer,
   Public Works Department,
   Fatorda, Margao – Goa.

2. First Appellate Authority
   Public Works Department
   Altinho, Panaji-Goa. ..... Respondent

Relevant emerging dates:

Date of Hearing : 31-08-2016
Date of Decision : 31-08-2016

ORDER

1. Brief facts of the case are that the Appellant Shri Rony Dias had filed a second appeal before this commission on 18/03/2011 and the said Appeal was Disposed vide an Order of this Commission passed on 16/01/2012 where the Appeal was partly allowed since information was furnished to Appellant and it was held that no intervention of this Commission is required. However the Commission asked that Appellant to prove his case that the information was furnish incompletely, incorrectly and further enquiry was posted on 12/03/2012.

2. During the hearing the Appellant is absent without intimation to this commission. It seen from the Roznama that he has remained continuously absent on four occasions i.e 23/02/2016, 20/04/2016, 12/07/2016 and today. The Respondent PIO is represented by Shri Meghasyam Naik, Jr. Engineer and the FAA is represented by Shri Salim Nazir, Asstt. Surveyor of works, both are present in person. Letter of authority filed by them is taken on record.

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3. The representative for the Respondent PIO contended that the Commission by an Order dated 16/01/2012 had disposed the appeal with the observation that no intervention is necessary as the required information is furnished and it is for the Appellant to prove his case that information provided is incorrect, incomplete and misleading and the enquiry does not pertain to the PIO. It is also submitted that the Appellant is neither appearing before the Commission nor has submitted any evidence that information furnished was incorrect, incomplete and misleading and that the Commission may take an appropriate decision accordingly.

4. The Commission on scrutiny of the file observes that indeed the Appeal was disposed by this Commission vide its order dated 16/01/2012 stating that no intervention is required as information is furnished and that it was for the Appellant to prove his case that information furnished to him by the PIO was incorrect, incomplete and misleading.

5. The Commission further observes that despite giving an opportunity to the Appellant to prove his case, he has failed to avail the same and has not produced any evidence in support of his said claim and as such adverse inference has to be drawn against the Appellant and there is no point in keeping a disposed Appeal case alive without justifiable reason.

6. The Commission also observes that the Appellant had filed a Second Appeal and not a Complaint case and in para 7 of the Order dated 16/01/2012 this commission has stated (last four lines) *'With this view in mind, I am of the opinion that the Appellant must be given an opportunity to substantiate that the information given to him is incomplete, incorrect, misleading, etc as provided in Section 18(1)(e) of the RTI Act'*

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7. The point for determination therefore is 'Whether a Commission can order an enquiry under section 18 of RTI when deciding an Appeal case which falls under section 19 of the RTI Act'?

The Hon'ble Supreme Court in CIC vs. State of Manipur & Ors has held that the procedure contemplated under Section 18 of the Act was altogether different from the procedure contemplated under Section 19 of the Act.

Section 18 of the Act, to the extent it is relevant provides that it shall be the duty of the Commission to receive and enquire into a complaint from any person who has been refused access to any information requested under the Act or who has not been given a response to a request for information or access to information within the time limits specified under the Act. It is, therefore, obligatory for the Commission to decide such a complaint on merit instead of simply directing the CPIO to provide information which the complainant had sought. If the Commission finds that the CPIO had without reasonable cause refused to receive an application for information or had not furnished information within the prescribed time or had given incorrect, incomplete or misleading information, it is required to impose prescribed penalty upon such a CPIO/SPIO, as the case may be.

Section 19 of the Act, on the other hand, provides for a first appeal to the First Appellate Authority under Sub-section (1) and a Second Appeal to the Commission under Sub-section (3) of the aforesaid Section. Sub-section (8) of the aforesaid Act deals with the power of the Commission with respect to the appeals preferred in terms of Sub- section (3) of the said Section and reads as under:-In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,-

(a) require the public authority to take any such steps as may be necessary to secure compliance wit.ı the provisions of this Act, including- (i) by providing access to information, if so requested, in a particular form; (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be; (iii) by publishing certain information or categories of information;

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(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records; (v) by enhancing the provision of training on the right to information for its officials; (vi) by providing it with an annual report in compliance with clause (b) of sub- section (1) of section 4; (b) require the public authority to compensate the complainant for any loss or other detriment suffered; (c) impose any of the penalties provided under this Act; (d) reject the application.

8. A closer scrutiny of the ingredients clearly point out that while the State Information Commission has the power to conduct an enquiry in a matter before it under Section 18 of the Act, however no such power is granted under Section 19 of the RTI Act which is an purely an Appellate procedure.

9. That apart the very fact that this Commission in its Order has stated that no intervention of the commission is necessary as information is furnished is sufficient to prove the bonafide that the PIO has acted reasonably and diligently and that information given was as available and as it existed as per the records and which is the mandate of the RTI Act.

10. As stipulated in the RTI Act the role of the PIO is to provide information as available from the records. Regrettably the PIO cannot procure information for the satisfaction of the Appellant. The PIO is not authorized to give any information which is non-existent nor can he create or analyze the information correctly as per the whims and fancies of the Appellant.

11. It is not a case where the PIO has denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information.

12. I am of the view that after arriving at such conclusion and being satisfied that there was no malafide intent by the PIO, the Commission should have closed the Appeal case completely rather than disposing the Appeal by partly and ordering a one sided enquiry which is not only a long drawn time consuming process that may take years for the enquiry to conclude but will also harass the Appellant with delays and unnecessary expenditure, besides not serving any useful purpose and will be an exercise in futility.

13. The decision of ordering an enquiry after disposing off the Appeal therefore in my considered opinion is erroneous and suffers from legal infirmity. The Commission therefore finds it prudent to recall the part order passed by this commission on 16/01/2012 and accordingly orders the enquiry proceedings to be closed.

All proceedings in the Appeal case accordingly stand closed.

Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the Order be given free of cost.

Under Secretary cum Registrar
Goa State Information Commission

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(Juino De Souza)
State Information Commissioner