

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

CORAM: Shri Juino De Souza State Information Commissioner.

Complainant No.55/SCIC/2011

Shri Nelito Fortes Gomes,
R/o Villa Fortes Gomes,
127, Demonaique,
Orlim, Salcete-Goa 403 724

..... Complainant

v/s

State Tuberculosis Officer (STO-Goa)
& Public Information Officer,
Revised National Tuberculosis Control Programme,
Directorate of Health Services,
18th June Road,
Provedoria Bldg,
Panaji-Goa.

.....Respondent

Relevant emerging dates:

Date of Hearing : 12-04-2016

Date of Decision : 12-04-2016

ORDER



1. Brief facts of the case are that the Complainant had vide his application dated 15/11/2010 sought certain information from the Respondent PIO. It is the case of Complainant that the PIO vide his letter dated 04/12/2010 supplied incomplete information and therefore he filed a Complaint before the Commission on 11/03/2011. The Commission vide its Order dated 13/02/2011 disposed the said Complaint while ordering the Complainant to prove that the information furnished is false and incomplete. Further enquiry was posted on 28-03-2012.
2. During the hearing the Complainant is absent despite advance notice issued by Registered Post (RPAD) without intimation to this Commission. This is the second time that the Complainant has remained absent. Respondent PIO submits that the former PIO had file a reply stating that all the information/documents sought by the Complainant under RTI dated 15/11/2010, 10/12/2010 and 04/02/2011 have been furnished well within time frame and therefore the Complaint has to be dismissed.

3. On scrutiny of the file it is observed that reply is filed by the Respondent on 28/06/2010. In Paragraph 5) of the reply it is stated that all the documents which were furnished to the Complainant were available in the office whenever the Complainant has called for any specific documents the same were furnished to him providing the relevant information and within the time frame. Paragraph No. 8 states that the Respondent Mr. Nelito Fortes Gomes (Complainant) was prosecuted for attempt to rape and was behind bars for 5 months i.e. 11/03/2010 to end of August 2010. This fact was informed by his mother itself. He was on contractual period of one year and therefore his services came to be terminated on 11/03/2010.
4. The Complainant has filed his rejoinder denying the contents of the reply of the PIO while stating that he the complainant was constrained to approach the Secretary (Health) Govt. of Goa with a representation dated 24-03-2011.
5. No doubt while inquiring into a complaint under Section 18, the commission has the powers if it is satisfied that there are reasonable grounds to inquire into the matter and may initiate an inquiry in respect thereof.
6. The Commission is of the view that this is an old matter of the year 2011- 2012, therefore asking the complainant to prove his case in the year 2016 after a lapse of four years and conducting an enquiry to ascertain whether the information furnished by the PIO to the Complainant is wrong or right is not only a long drawn time consuming process that may take years for the enquiry to conclude but will also harass the complainant with delays and unnecessary expenditure, besides not serving any useful purpose and will be an exercise in futility.
7. The Commission while conducting an enquiry will have to follow the prescribed procedure under the Indian Evidence Act including: summoning and enforcing the attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things; requiring the discovery and inspection of documents; receiving evidence on affidavit; requisitioning any public record or copies thereof from any court or office; issuing summons for examination of witnesses or documents; and any other matter which may be prescribed.

8. However the very fact that the Commission in its Order of 13/02/2011 in paragraph 8. In first two lines has stated that '*since information is furnished, no intervention of the commission is required*' this itself 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.
9. 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. 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.
10. 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 Complaint case completely. The decision of ordering an enquiry in my considered opinion is erroneous and suffers from legal infirmity. The Commission therefore finds it prudent to recall the order passed by this commission on 13/02/2011 and accordingly order the enquiry proceedings to be closed.
11. There is no need for the Complainant to prove his case before this commission however the Complainant if so advised can seek other legal remedies to agitate his grievance that the information furnished was incorrect and misleading before the appropriate forum in accordance with law.
12. The Commission however makes it clear that this Order will not come in the way of the Commission inquiring into a complaint filed under section 18 if the findings so deserve an enquiry.

Pronounced in open court before the parties who are present. Notify the parties concerned. Authenticated copies of the order be given free of cost.




(Juino De Souza)
State Information Commissioner