

BEFORE THE GOA STATE INFORMATION COMMISSION
Seventh Floor, Kamat Towers, Patto, Panaji, Goa.

CORAM: Shri. Prashant S. P. Tendolkar,
State Chief Information Commissioner
Smt. Pratima K. Vernekar,
State Information Commissioner

Complaint No.06/SIC/2016

Shri Suryakant B. Naik,
Cuchelim Mapusa, Bardez-Goa.

..... Appellant

V/s.

1. Public Information Officer/
Keerti Vidyalaya High School Siolim. Respondent No.1
2. First Appellate Authority,
Dy. Director of Education Zone,
Mapusa Goa Respondent No.2

Filed on: 04/02/2015

Decided on:11/07/2016

O R D E R

1. This order shall dispose the present Complaint. The fact in brief which give rise to the present appeal are as under:-
 - a) The appellant by his application, dated 16/10/2014 sought several information as contained therein at serial Nos. 1 to 9. The respondent no.1, PIO replied the said application on 10/11/2014 refusing to give the information under the shelter of exemption under section 8(1)(h) of the Right to Information Act (Act for short)and hence, by appeal to the respondent no.2, complainant challenged the order of the PIO.
 - b) The respondent no.2,by its order, dated 08/01/2015 allowed the, first appeal and directed the PIO to furnish the information within 8 days from the date of said order.
 - c) In spite of the said order the information was not furnished, which has compelled the appellant to file the present complaint for furnishing information and other reliefs.

...2/-

- d) After notifying the parties they appeared. The PIO filed reply. In the reply in addition to other contentions, it is the main contention of PIO that against the order dated 08/01/2015 of First Appellate Authority, the Respondent No. 1 has filed a second appeal before this Commission and the said appeal was pending. It is also the contention of PIO that the Complainant was working as its Headmaster, whose services were terminated and hence out of vengeance the complainant has filed this complaint for settling his private issues.
- 2) Arguments were heard the Complainant argued in person. He submitted that initially the PIO, after the application under section 6, called for complying the requirements of citizenship and in spite of the same the PIO refused to furnish the information taking shelter under section 8(1)(h) of the Act. According to him after passing the order by the FAA, on 25/06/2014 appellant sought the said information free of cost. By subsequent letter of PIO, dated 15/07/2014 he was informed that the information is ready and to collect the same after seeking permission. According to complainant by subsequent letter, dated 04/08/2014 PIO called for payment of fees and the copies of the documents which was subsequently furnished but were not authenticated.

The complainant further argued that the First Appellate Authority, on the appeal filed by him directed the PIO to furnish the information by holding that the grounds for rejection of the information were not correct. In spite of which the PIO did not furnish the information and instead filed an appeal before this Commission challenging the order of the FAA. He further submitted that the second appeal filed by the PIO before this Commission has been dismissed holding that the same is not maintainable. By referring to a copy of the letter, dated 28/05/2016 filed by the PIO today, the complainant submitted that he has received the said letter offering to give the information. ...3/-

3) On the behalf of PIO, it was argued that the appellant is a suspended employee of the school and he has been harassing the management and the school by filing such application. According to him the information was refused as an enquiry initiated against the appellant was not completed. According to PIO the said appellant has destroyed the records and order of the FAA was received by PIO only on 4/07/2014. He submitted that he was called upon to seek permission before receiving the information as he was suspended from the school. According to him the information can be furnished only which is available with the PIO and not which is not there in his custody. While concluding his arguments he submitted that the information was parted with but the authorized person refused to pay the fees. PIO thus submitted that the complaint be dismissed.

The PIO further submitted that though the FAA directed to furnish the information the same was not a correct order and hence we filed and appeal against the said order of the FAA to this Commission being Appeal No.12/2015 which first finally disposed by the Commission on 15/04/2016. Accordingly, by it's letter dated 28/05/2016 on receipt of the copy of the said order the complainant was offered to collect the information, which he has delayed. He finally concluded that as the second appeal was pending before this Commission the information was not given and immediately after the order it was offered. Hence the action of PIO is bonafide.

4) For the purpose of considering the claim of penalty and compensation, it would be appropriate to consider the provisions of the act governing the same. Section 18 of the Act reads:

“18. Powers and functions of information Commission:- (1)
Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person:-

- a) *Who has been unable to submit a request to a Central public information Officer, or State Public Information Officer as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act of forwarding the same to the Central Public Information Commission or the State Information Commission, as the case may be;*
- b) *Who has been refused access to any information requested under this Act;*
- c) *Who has not been given a response to a request for information or access to information within the time limits specified under this Act;*
- d) *Who has been required to pay an amount of fee which he or she considers unreasonable;*
- e) *Who believes that he or she has been given incomplete, misleading or false information under this Act; and*
- f) *In respect of any other matter relating to requesting or obtaining access to records under this Act.*

Thus the act empowers the Commission to inquire into complaints which involves only the case as contained at clauses (a) to (f) above. It is nowhere the case of the complainant that he was unable to submit a request OR that PIO has refused to accept OR that has refused access OR that he has not been given a response to a request for information OR that he was required to pay an amount of fee which he considers unreasonable; OR that he was given incomplete, misleading or false information OR that it is a matter relating to requesting or obtaining access to records.

Thus considering the allegation of the complainant the point to be determined is whether the complainant was refused access to the information and if yes whether it was malafide.

5) It is not in dispute that the PIO on the ground of exemptions under section 8, has initially refused the information. Such a refusal was rejected by the FAA and against the order of FAA, the PIO filed second

appeal to this Commission. Though it is the contention of the complainant, and rightly so that the same was ultimately dismissed but the fact remains is that an appeal was pending. Immediately after disposal of the said appeal by this Commission, the PIO by his letter dated 28/05/2016 has offered to furnish the information, which till this date was not collected by the complainant for personal reasons. These facts are not disputed. Hence, not-with-standing the merits of the said appeal pending before this Commission, the fact that it was pending shows the reason for delay. Hence it cannot be held that the delay in furnishing information on the part of the PIO was willful.

6) The prayers of the complainant are in the nature of penal action either by grating of penalty or by compensation. The strength of evidence required in such proceedings is laid down by the Hon'ble Court of Bombay at Goa in **writ petition No.205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others wherein it is held;**

“11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate.”

7) Considering the above facts we do not find any malafide on the part of PIO in non furnishing the information sufficient to attract the penalty or Compensation as provided under section 20 of the act. Hence, we are unable to concede to the request to the complainant vide his prayer b. Prayer (a) has become redundant as the same is already offered to be furnished by the PIO by letter, dated 28/05/2016.

In the circumstances Complaint stands dismissed.

Parties to be communicated alongwith the copy of Order. No further appeal is provided under the Act against this order.

Proceeding closed.

Pronounced in the open proceeding.

Sd/-

(Prashant S. P. Tendolkar)

State Chief Information Commissioner
Goa State Information Commission,
Panaji-Goa

Sd/-

(Pratima K. Vernekar)

State Information Commission
Goa State Information Commission,
Panaji-Goa