

GOA STATE INFORMATION COMMISSION

‘Kamat Towers’, Seventh Floor, Patto, Panaji – Goa

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

Penalty Case No.29/2010
In
Complaint No.438/SCIC/2010

Shri Uday A. C. Priolkar,
R/o H.No.C5/55,
Mala, Panaji –Goa.

..... Complainant

V/s

- 1) The State Public Information Officer,
Dy. Director (Admn)
PWD., Altinho, Panaji –Goa.
- 2) The Additional Director (Vigilance)/PIO,
Serr Building, Altinho,
Panaji –Goa.

..... Opponents

ORDER

1) This order shall decide the show cause notice issued to the opponents in terms of section 20(1) of the Right to information Act 2005 (Act), issued by this commission on 21/10/2010.

2) While disposing the above referred complaint No. 438/SCIC/2010, this Commission held that apparently there is a delay firstly in transferring the application under section 6(3) of the Act and secondly in furnishing the information.

3) Pursuant to the said notice the Opponents filed the reply. It is the case of the Opponent No.1, vide his reply, dated 11/01/2011 that no penalty proceeding be initiated against him under section 18(1) of the act and that there are no averments as regards the alleged delay caused. According to Opponent No.1 admittedly the entire

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information is furnished as per the order of the Commission. Opponent No. 1 further submitted that the complaint dated 26/11/2008, pertaining to which information was sought, was not received by opponent No.1 and that it was made known to opponent No.1 on 8/07/2010, during which time the complainant has already filed complaint before this Commission. According to opponent No.1 the copy of the complaint was received from the Vigilance Department i.e. opponent No.2 only on 26/07/2010. According to Opponent No.1 it has also sought a copy of the said complaint, dated 26/11/2008 from the complainant by its letter dated 16/07/2010 inspite of which it was not furnished by the complainant. According to opponent No.1 a reply was filed by it before this Commission accordingly and hence there is no delay on the part of opponent No.1.

4) Opponent No.2 filed a reply through Shri Arun L. Dessai . According to him he was posted as additional Director since 07/07/2009. The application for information was transferred by his predecessor on 8/4/2009 and he has no connection with the same. According to him staff position was far below the authorized strength of the Directorate. According to him the records as well as the files was not properly maintained and proper listing of the files were not done and which was done by him. According to him he tried to make justice to the post and stream line function of the said department. The Opponent No.2 by regretting the delay in submission of the information/transferring the matter also regretted for the inconvenience cause to the complainant. While concluding his reply he submitted that section 20 of the act does not apply as no ingredients thereof are fulfilled.

5) In the course of proceedings, one Shri C. Radhakrishnan, who filed an application for intervention was allowed to participate. He filed several submissions however, said submissions pertains to the merits of the complaint as was pending before the Commission. We are unable to consider his said submissions as the said complaint has been finally decided by this Commission on 21/10/2010. what has remained to be decided in the present proceeding is only the penalty, if any leviable, on the party under section 20 of the Act. The penalty proceedings is a matter between the Commission and the delinquent PIO. In the present case therefore, though the third party is allowed to participate, his submission need not be considered.

6) The appellant filed his written submissions. According to the Appellant though his application for information was filed on 6/01/2016, the respondent No.2 transferred the application to Opponent No.1 only on 08/04/2010. Thus according to him there is a delay of 58 days. According to him the transfer should have been affected within 5 days and having not done so penalties are leviable on opponents. According to him both the respondent failed to furnish the information with the time stipulated under the Act and hence they are liable for penalty . The complainant relied upon several orders passed by the Information Commissioners in support of his said submissions.

7) We have considered the records. This commission while disposing the complaint on 21/10/2010 has held that the information has been furnished. In the entire order the commission has held that there is delay in transferring the application u/s 6(3),which reads:

"3) Where an application is made to a public authority requesting for information:-

i)Which is held by another authority;or

ii) the subject matter of which is more closely connected with the functions of another authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided.....”

8) The delay that has caused in the present proceeding as it appears in the face of record is at the end of the opponent No.2 . In the present case there is no dispute that the information sought was held by opponent No.1 . The Opponent No.2 has received the said application on behalf of public authority and not as PIO and as the information was held by another authority, the same was transferred in terms of section 6 (3) of the Act. Thus the opponent No.2 in the present proceedings was the representative of the other public authority which was not holding the information and hence cannot be termed as a Public Information Officer (PIO). The opponent No.2 under section 6 (3) was thus liable to transfer the said application within 5 days from the date of receipt thereof by him.

9) Section 20(1) of the Act reads:

"20.Penalties:- 1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished

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information within the time specified under sub-section (1) of section 7 or malafidely 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, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that”

10) On plain reading of the above provisions, for the purpose of concluding that a penalty is leviable, the commission is required to form an opinion that the public Information Officer without any reasonable cause **refused to receive** any application or has **not furnished the information in time** or malafidely **denied the request** for information or knowingly **given incorrect, incomplete or misleading** information or **destroyed the information**.

11) A joint reading of section 6(3) read with section 20(1) thus reveals that the right of commission to impose penalty accrues only in the above cases of **refusal, non furnishing, denial or incomplete, misleading information or destruction of information by the PIO**. In the present case the allegation is regarding non transfer of application to the PIO by the public authority within stipulated time. Such an Act is not covered under Section 20(1) of the act. More over as stated above, opponent No.2 is also not the PIO liable to furnish the information.

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12) Coming to the liability of the opponent No.1 it is no where the contention of the complainant that a delay is caused by the opponent No.1. As per the records and as held by this commission while passing the order on 21/10/2010, the information is furnished by the opponent No.1 after getting the application transferred to the opponent No.1. Besides this there are several other correspondence filed by the PIO on records, whereby for the purpose of furnish the information the PIO i.e. the opponent No. 1 has sought certain details from the complainant and hence even if there is delay same appears to be contributory and not absolute on the part of the PIO.

13) ***The Hon'ble High Court of Bombay, Goa bench at Panaji, while dealing with a case of penalty (Writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others)*** has observed:

"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."

14) Considering the above position we find no convincing and concluding reason to penalize the opponents u/s 20(1). However, the delay caused by the opponent No.2, in transferring the said application to the PIO as required under section 6(3) of the Act, is certainly against the spirit of the Act and the same is required to be dealt with by us in terms of section 25(5) of the act.

15) In the aforesaid circumstances we find no substance to proceed with the said notice dated 21/10/2010 issued by this Commission under section 20(1) of the Act and consequently the same is withdrawn. Consequently the proceedings are dropped.

The opponents, more particularly the opponent No.2, is hereby directed to consider the provisions of the Act in its true spirit and intent and hence forth be diligent to bring its actions and practices in conformity with the provisions and spirit of The Right to information Act 2005.

Notify the parties.

Sd/-
(Prashant S. P. Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa

Sd/-
(Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission
Panaji-Goa

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- 1) The State Public Information Officer,
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PWD., Altinho, Panaji –Goa.
- 2) The Additional Director (Vigilance)/PIO,
Serra Building, Altinho,
Panaji –Goa. Opponents

CORRIGENDUM TO ORDER

The following Corrigendum is issued to the above order.

(i) The cause title in the present proceedings be read as:

Shri Uday A. C. Priolkar,
R/o H.No.C5/55,
Mala, Panaji –Goa. Complainant

V/s

- 1) **The State Public Information Officer,**
Dy. Director (Admn)
PWD., Altinho, Panaji –Goa.
- 2) **The Additional Director (Vigilance)/PIO,**
Serra Building, Altinho,
Panaji –Goa.
- 3) **Shri C. Radhakrishanan,**
Asst. Engineer, PWD,
Tonca, Carazalem-Goa. Opponents

(ii) The date of the Order shall be read as **“19/10/2016.”**
Rest of the contents of the Order remains the same.

Sd/-
(Prashant S. P. Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa

Sd/-
(Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission
Panaji-Goa

