

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

Shri. Prashant S. P. Tendolkar ,
State Chief Information Commissioner

Appeal No. 76/SCIC/2016

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

V/s

- 1) The Public Information Officer,
Director,(Admn), PWD Altinho,
Panaji –Goa.
- 2) The Public Information Officer,
Executive Engn. Div III, St. Inez,
Panaji –Goa.
- 3) The Public Information Officer,
Executive Engn. Div XVII, Alto,
Porvorim Bardez –Goa.
- 4) The First Appellate Authority,
Superintendent of Surveyor,
PWD Altinho Panaji –Goa.
- 5) The Under Secretary,
Goa Legislative Assembly,
Porvorim –Goa. Respondents

Filed on: 04/05/2016

Decided on: 13/09/2017

1) FACTS:

- a) Facts in brief, as pleaded by appellant, are that the Appellant vide application, dated 16/12/2015 sought from the respondent no.5, the information ***viz. Copies of report and Educational Qualification, Birth Certificate of Engineers working at PWD with details such as names, addressed of Engineers, designation, place of posting, date of joining,***

...2/-

name of University/College they passed out, year of passing from University/College, passed out year of passing from University/College whether University is recognized by U.G.C., Government of India, As per Unstarred L.A.Q. No.25 tabled by Shri Digambar Kamt, Hon'ble M.L.A. of Margao submitted by P.W.D.

b) The Respondent No.5 transferred said application vide letter, dated 17/12/2015 to the Respondent No.1, who in turn informed the Appellant vide letter No. SPIO/PWD/RTI/ADM/ (II)102/2015/03 dated 17/1/2016 rejecting his application stating that information requested by him as exempted under section 8(2) (j) of R.T.I. Act, 2005.

c) The Appellant filed First Appeal before First Appellant Authority (FAA), Superintendent of Surveyor, P.W.D., Altinho on 13/01/2016 which was disposed vide order dated 12/02/2016 directing the Respondent No.1 to furnish information within 3 weeks from the date of receipt of said order.

d) According to appellant the Respondent No.1 informed Appellant vide letter No. S.P.I.O./PWD/RTI/Adm(II)102/2015/18, dated 15/03/2016 that Correspondence to the respective universities/ authorities is still under transaction.

e) According to Appellant , vide application, dated 17/03/2016, addressed to the Respondent NO.1 he requested it to furnish information which was been collected by the Respondent No.1 immediately but the

Respondent No. 1 informed the Appellant that correspondence has been made to the Secretary, Government of Kerala, Vice Chancellor from the difference states like Goa, Maharashtra, Karnataka, Madhya Pradesh and Orissa vide letter No. S.P.I.O./PWD/RTI/ADM(ii)/102/2016/21 dated 18/03/2016, and that date of this appeal the Respondent failed to furnish the information to the Appellant within three weeks from the date of receipt of the order dated 12/02/2016. Though the appellant has referred to said letter, dated 17/03/2016, no copy of such letter is filed on record.

f) According to appellant, Respondent No.1 issued Circular in various Divisions of P.W.D. directing them to disclose the information from the engineers working under various Divisions of P.W.D. and as per the order, dated 12/02/2016 Respondent No.2 informed the Respondent No.1 vide letter No.2/40/1/16-17/WD/iii/PHE/PWD/ADMN/123, dated 19/04/2016 refused to furnish information to the Respondent No.1.

g) According to appellant Respondent No.1 informed him that Respondent No.2 refused to disclose the information vide letter No. SPIO/PWD/PCE/ADM/(102)/2015/33 dated 27/04/2016. According to him this act of Respondent No.2 is highly objectionable, unwarranted, malafide and violation of R.T.I, and disobeying the order passed by the Appellant Authority, and also contempt of the Court and unbecoming of a Government Servant and gross violation of the C.C.S.

Conduct Rules Rule No.11,14,15 and attracts disciplinary action against the Respondent No.2. According to him Respondent No.3 informed the Appellant vide letter No. PWD/DXVII(PHE)-N/AMD/F.166 16-17/19 directing the Jt. Director of Accounts, Panaji, Pay IX to furnish information to the Appellant after receiving necessary photocopying charges. According to the appellant this act of Respondent No.3 is highly unacceptable and gross violation of the order passed by the First Appellate Authority in Appeal No.4 of 2016.

With the above pleadings, the appellant has prayed for a direction to furnish information as also for penalty against respondents and compensation.

h) The notices of the appeal were issued to the parties, pursuant to which they appeared. Adv. Atish Mandrekar appeared on behalf of the respondent no.3 and filed his wakalatnama. Respondents Nos. 1 to 5 filed their replies to the appeal. The copies of the said replies were furnished to the appellant.

i) In his reply the Respondent No.1 submitted that vide letters, dated 15/03/2016 and 18/03/2016, the Appellant was informed that the information desired by him was sent for verification to the respective Universities and no sooner the information is received it will be furnished to him within no time . Copies of said letter are annexed to the reply. It is further stated that the process of verification of Educational Qualification certificates of all the Engineers of

PWD was a lengthy process hence the Respondent could not furnish the desired information within 3 weeks as directed by First Appellate Authority. That vide letter dated 27/04/2016, the Appellant was informed to collect the information in respect to Educational Qualification Certificates of the Engineers of WD III, St Inez, Panaji and was informed that the same office has refused to furnish the information with regards to Birth details vide their letter, dated 19/04/2016 copy of which is annexed.

j) It is according to respondent No.1 that vide letter, dated 21/06/2016 once again requested the Executive Engineer WD III, to furnish the Birth Certificates of Engineers working under his control as per the directives of Appellate Authority, copy of which is annexed to reply and that vide letter dated 27/07/2016, the Appellant was informed to collect the birth and Educational Certificates of Engineers of PWD which consists of 757 nos. of pages free of cost and the same were collected by him on 03/08/2016, copy of such correspondence is annexed.

k) According to Respondent No.1 vide letter, dated 22/08/2016, balance information was also furnished to the Appellant which consists of 42 pages free of cost, copies of such correspondence is annexed.

l) **It is further** according to Respondent No.1 the delay in furnishing the information to the Appellant was unintentional and caused due the lengthy process of

verification of the Educational Qualification from different Universities and due to non availability of information in the custody of the Respondent.

m) The respondents nos. 2 to 5 have also filed their replies wherein the facts as stated by the respondent no.1 are not disputed. Hence I refrain from reproducing the contents of the same herein to avoid repetition.

n) The arguments on behalf of the respondent were sought to be heard and the respondents submitted that their replies be treated as their arguments. The appellant failed to remain present after 1/6/2017 when the matter was fixed for arguments of the parties, hence the matter was posted for orders on 05/09/2017.

On 05/09/2017 the appellant appeared and submitted that he would like to argue the matter. Though the matter was posted for orders, submissions of appellant were heard in the interest of justice and fair play.

O) In the course of his arguments on 05/09/2017, the appellant submitted that the information submitted to him is part. It is also according to him that though the FAA has passed the order directing to furnish the information same was not obeyed and hence FIR u/s 217 of IPC is required to be filed. He also prayed for penalty in terms of section 20(1) and 20(2) of the act.

2. FINDINGS:

a) I have perused the records and also considered the submissions of appellant and that of respondent which

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are in the form of replies. It is the contention of respondents that the information as was sought is already furnished. The copies of the letters dated 27/7/2016 and 31/8/2016 which are filed by the respondent no.1 and acknowledged by the appellant shows that the appellant has received the said information. Even after receipt of the copies of the said replies which contained such statements. The appellant has not disputed the contention that the information has been duly received by him. The appellant has remained absent after receipt of the replies filed by the respondents. It is only in the course of arguments on 05/09/2017 that the appellant has submitted that the entire information is not furnished. On seeking clarification as to which information is not received, the appellant could not clarify precisely as to which information is yet to be furnished.

It is not indispute that the information pertain to 551 persons, with reference to their birth certificates, Education certificates, universities, year of passing, whether the university recognized or not etc. he also required details of padresses, place of posting, date of posting etc. The information which is furnished to appellant ran in 799 pages. The appellant was required to verify the said information received by him before alleging that the same is only pat. It appears that the appellant though was obtained the voluminous information has not gone through the same. In these circumstances, unless the appellant verifies and confirms for himself as to which information is furnished it would be premature to hold that any

Information is withheld. In the above circumstances his contention that part information is withheld cannot be accepted. Hence considering the above position that the information has been furnished consequential prayer of the appellant at para (1) is redundant.

b) It is also the contention of appellant that the PIO has not complied with the order of FAA and hence criminal proceeding u/s 217 has to be initiated.

I am unable to subscribe to the above argument of appellant. The proceedings under the act are civil in nature and the consequences which follow there under are civil in nature unless it is specifically prescribed under the act that it would result in criminal offences. The act does not make any such provision for dealing with the non compliance or the orders of FAA as criminal offences. In the circumstances I am unable to concede to the said prayer of the appellant to register offence u/s 217 of Indian penal code.

Even otherwise the violation alleged does not contain in it the ingredients of section 217 of IPC.

c) As the appellant has prayed herein for imposition of penalty in terms of section 20(1) and 20(2) of the act and for compensation in view of the delay caused in furnishing the information, the point which is required to be decided on this aspect is **whether the delay caused in furnishing the information was deliberate and/or intentional.**

d) A perusal of the appellant's application, dated 16/12/2015 filed under section 6(1) of the Right to Information Act 2005 (Act for short) was seeking the information of all the engineers working with P.W.D. pertaining to their names and addresses, designation, places of posting, date of joining, names of universities and colleges which they passed out through, year of passing. These engineers are posted in various sub divisions of the department. The requirement was also to furnish whether the universities were recognized by UGC, Government of India etc. Thus the information which was sought, from the application itself shows that the same is voluminous and required assistance from other offices. The furnishing of the said information also required to collect the details from the various bodies including the universities in the state of Goa as also outside the state.

e) The PIO initially in his prudence had informed the appellant that the said information being personal in nature was exempted from disclosure u/s 8(1) (j) of the act. It is only after the order dated 12/2/2016, passed by the FAA that the PIO was required to comply with the direction of furnishing information.

f) After the said order of FAA the appellant was informed that the correspondence with various universities was in progress and that the information would be furnished no sooner the same was received. This gesture of the PIO is supported by various correspondences that is placed on the record by the parties. It is on record that the Executive

engineer WD –III had refused certain information as the same was personal in nature. I find such a stand also not mala fide. The said office was not given any opportunity of being heard as it was not made as a party to the appeal. In any case the information as per the records is already furnished which as per the said letters contains 757 plus 42 i. e. 799 pages, in total which is quite voluminous and bulky. The respondent have placed on record the various correspondence which throws light on the attempt made by the PIO for securing the information for being furnished to the appellant. It is not in dispute that the information sought was lying with other authorities like universities, colleges etc.

g) While dealing with the cases of bulky and voluminous information the Hon'ble High Court of Punjab & Haryana in the case of **(Dalbir singh V/S Chief Information Commissioner Haryana & others WP©No.18694 of 2011) has observed.**

"There appears to be no justification to deny the information on this ground. Suffice it to mention that if the records are bulky or compilation of the information is likely to take some time, the Information Officer might be well within his right to seek extension of time in supply the said information, expenses for which are obviously to be borne by the petitioner."

h) 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/-

"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."

i) Considering the above ratio as laid down by the High, I find that the delay was obvious due to the quantum of information sought and that the same was required to be collected from other authorities. There is evidence showing that the efforts were made by the PIO in securing such information. In the circumstances I find no intentional delay on the part of any of the respondents. In the circumstances I find no grounds to invoke my powers under section 20(1) and or 20(2) for imposing penalty or under section 19(8) (b) of the act for grant of compensation. In the above circumstances I proceed to dispose the present appeal with the order as under:

O R D E R

Appeal is dismissed. Proceedings closed. Notify the parties.

Pronounced in the open hearing.

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