

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

**CORAM: Smt. Pratima K. Vernekar,
State Information Commissioner.**

Penalty 38/2016

In

Appeal No.128/SIC/2015

Adv.Shri. Pranav V. Sanvordekar,
H.No.474/A,"Muktayee",
Bagwada, Sanvordem –Goa.

.....Appellant

V/s.

1. The Public Information Officer.
Under RTI Act,2005 ,
Goa Industrial Development
Corporation (GIDC),
EDC Complex,Panaji - Goa.
2. The First Appellant Authority
Under RTI Act, 2005,
Goa Industrial Development
Corporation(GIDC),
EDC Complex, Panaji –Goa.Respondents

Disposed on:- 7/12/2016

ORDER

1. While disposing the above Appeal, by order dated 04/10/2016, this Commission had issued notice under section 20(1), 20(2) and under section 19(8) (b) and also seeking reply from Respondent No. 1, PIO (Public Information Officer), Goa Industrial Development Corporation (GIDC) Panjim to showcause as to why penalty, compensation disciplinary action should not be imposed/initiated against him.
2. In pursuant to the showcause notice PIO Shri R. C. F. Sequira appeared on 16/11/2016. Appellant was also present in person. Reply came to be filed on behalf of Respondent PIO on 16/11/2016. Copy of the same was furnished to the Appellant and the Appellant showed his desire to file counter reply. During the hearing the

Appellant submitted that the disciplinary proceeding has to be initiated against the Respondents and heavy cost to be imposed on him for dereliction of his duties.

3. On subsequent date as Appellant remained absent nor his counter arguments were placed on records. An opportunity was given to the Appellant to file his submission on or before next date of hearing and the matter was fixed on 7/12/2016 for arguments on penalty proceedings at 3.30.p.m. on the said day the Appellant absent. Respondent No. 1 Shri R. C. F. Sequira appeared and submitted that his reply to showcause notice dated 16/11/2016 and annexure may be considered as his arguments.
4. I have perused the records and also the annexure 'B' i.e. note dated 19/08/2015 addressed to Assistant Public Information Officer (APIO), Estate Division and the note dated 7/09/2015 addressed to APIO (ED). It appears that the Public Information Officer (PIO) at initial stage have acted very promptly so also made respective notes to the Officers of ED. On the receipt of the information from the Estate Division, he has promptly replied to the appellant on the same day i.e. on 14/09/2015. However since the APIO of ED has replied to him that said information is "not available in estate department", the Respondent PIO ought to have made efforts to seek the same from the other sections of IDC. The PIO represents the entire office and not the single section and he was duty bound to seek the assistance of any other Officer which he considered necessary for the proper discharge of duties under RTI Act and then to furnish the information to the Appellant. It appears that the initial reply given under section 7 appears to be given just for the sake of replying the same and not with the true spirit of RTI Act.
5. Secondly the Order dated 15/10/2015 passed by the first Appellate Authority (FAA) was not complied by the Respondent No. 1 PIO. The Respondent No. 1 PIO is silent on the compliance of the order of FAA. The PIO has no respect to abide the orders passed by the Sr. Officer. After the First Appeal was filed the Respondent PIO was directed to furnish the information within 2 weeks time from the date of passing of the Order. The appeal was thus for the purpose of furnishing the information which was refused by the PIO. The order of the FAA was mandatory in nature and required only compliance thereof. Once the order is passed by the higher authority what remains to be done by the PIO is only a compliance thereof. The reply which is filed to the Showcause notice, no explanation or

reason is furnished by the PIO for not providing the information and for not complying the order of FAA. It is only during the hearing before this commission and as the Commission has directed to make available the information sought by the Appellant the steps were taken by the Respondent No. 1 PIO which could be seen from the annexure 'D' note dated 04/04/2016 addressed to APIO (M.D. Secretariat). The information came to be furnished to the Appellant on 18/04/2016 and on 3/06/2016 before this Commission. There is a delay of about 6 months in furnishing the information in compliance with the order of FAA. The PIO have not assigned any reason for the delay in complying the order of FAA and he is silent on such aspects.

6. The Appellant have been made to run from pillar to pole only to get information. It also appears that vide initial reply dated 18/04/2016 incomplete information was provided to Appellant. The same could be gathered from additional information which came to be filed on 03/06/2016 enclosing various annexures. In the initial reply before this Commission the Respondent PIO have answered point 2 "as the information not available with this Corporation, however vide additional reply he has provided information at point No. 2 alongwith annexures 'A' to 'E'
7. The Hon'ble High Delhi court in union of India V/s Vishwas Bhamburkar , has observed as follows:-

The right to information Act is a progressive legislation aimed at providing to the citizens access to the information which before the said act came into force could be claimed as a matter of right. The intent behind enactment of the Act is to disclose the information to the maximum extent possible subject of course to certain safeguards and exemptions. Therefore, while interpreting the provisions of the Act, the court needs to take a view which would advance the objectives behind enactment of the Act, instead of taking a restrictive and hyper- technical approach which would obstruct the flow of information to the citizens.

This can hardly be disputed that if certain information is available with a public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the Government Departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily, the information which at some point of time

or the other was available in the records of the Government, should continue to be available to the concerned department unless it has been destroyed in accordance with the rules framed by the department for destruction of old record. Therefore, whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information whenever it may be available, it is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information sought by the applicant cannot be traced or was never available with the Government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing his inability to provide the desired information. Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/ officials responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any Department /office, to deny the information which otherwise is not exempted from disclosure, wherever the said department /office finds it inconvenient to bring such information in to public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.

8. Further it is observed that Respondent NO. 1 PIO have not justified the delay in supplying the information to the Appellant. And also failed to show sufficient cause as to why action should not be taken against him.
9. Public Authority must introspect that non furnishing of the correct or incomplete information lands the citizen before FAA and also before this Commission resulting into unnecessary harassment of the common men which is socially abhorring and legally impermissible, therefore some sought of compensation helps in caring this social grief.

10. In the result, Hence the following order is passed:-

ORDER

- a) The PIO, Respondent No. 1 shall pay to the Appellant a sum of Rs. 5000/- (Rupees five thousand Only) as compensation for causing him hardship and mental torture and agony in seeking the information.
- b) The aforesaid total amount payable as Compensation shall be deducted from the salary of the PIO shall be deposited in this Commission for onward payment to the Appellant.

Penalty proceedings dispose off accordingly. Pronounced in open proceedings. Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Sd/-

(Ms. Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa