

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

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

Complaint No. 33/SCIC/2014

Swapnesh B. Sherlekar,
House No. 284, Shirodwadi,
Mulgao,
Bicholim Goa .

.....Complainant.

V/s.

1. Director of Administration & SDPO PWD,
O/o the Principle Chief Engineer,
Public Information Officer (PIO),
Public Works Department,
Altinho Panaji Goa.

2. The Manager/APIO,
PWD Labour Supply Society,
O/o the Principle Chief Engineer,
Altinho Panaji Goa.

....Opponent

Complaint filed on :-10/09/2014

Decided on: 23/03/2017

ORDER

1. This Commission while disposing the Appeal No. 94/SIC/2013 vide order dated 03/06/14 had allowed the appeal and directed the Respondent No. 2 PIO, to supply all the requisite and sufficient information to the applicant within one month from the receipt of the Order and further vide said order this Commission also directed Respondent PIO to transfer the relevant question to such Office bearer of the PWD Labour Supply Society under section 6(3) of the RTI Act.
2. It has been also made clear by the Chief Information Commissioner in the said order that the information if supplied within one month there shall ensure no penalty case.

3. Complainant approached this Commission by way of Complaint on 26/08/2014 with the prayer to provide complete and accurate information and for imposing suitable penalty to the Opponent for contravening the order of Honorable SCIC and for compensation for causing hardship to him.
4. In pursuant to the notice, the Complainant remained absent inspite of due service. Respondent No. 2 PIO Smt. Madhura Naik was present and Opponent No. 2 was represented by Suksha Morajkar.
5. Reply came to be filed on behalf of Opponent No. 2 PIO on 5/1/2017 and also additional reply came to be filed on 19/01/2017 thereby enclosing the copies of letter dated 1/09/2014, 11/07/2014, 23/06/2014.
6. Reply also came to be filed on behalf of Opponent No. 3 i.e. Manager PWD, Labour Supply Society Altinho Panaji Goa on 21/11/2016.
7. Opportunities were given to Complainant to collect reply of both the Opponents and to argue the matter. Despite of same no arguments were advanced by the Complainant. Respondent No. 1 PIO submitted that both reply may be treated as her written arguments.
8. I have perused the records available in the file, the 1st relief which the Complainant have sought is for providing information.
9. In the High Court of Karnataka At Bangalore dated in writ Petition No. 19441/2012 and Writ Petition Numbers 22981 to 22982/2012 C/W Writ Petition No. 24210/2012 and Writ Petition Numbers 40995 to 40998/2012 (GM-RES) Between M/s Bangalore Electricity Supply Company Limited. V/s. State Information Commissioner, Karnataka information Commission. has held that:-

"information Commissioner has got no powers under section 18 to provide access to the information which has been requested for by any person and which has been denied and that the remedy available would be to file an Appeal as provided under section 19 of the RTI Act"

10. By applying the same ratio, this Commission cannot grant relief as prayed at para 11 of his Complaint.
11. Coming to the other relief which are in penal nature. It is seen from the records that, the Opponent have submitted vide their reply dated 05/01/2017 and 19/01/2017 that information was furnished to the Complainant which was collected by them from deemed PIO, from PWD, Labour Supply Society who is Opponent No. 2 herein vide their letter dated 23/06/2014 and 11/07/2014.
12. Opponent No. 3 vide their reply dated 21/11/2016 have contended that the information was submitted by them to Opponent No. 2 PIO vide their letter dated 18/06/2014 for onward submission to the Complainant.
13. In the nutshell it is case of both the Respondent in pursuant to the direction of this Commission due information is furnished to the Complainant within one month in respect of his RTI application dated 04/03/2013 and 28/03/2013 and the same were collected by the applicant.
14. It is case of the Complainant that Opponent have replied that the information beyond the set deadline of 30 days differing to the instructions of SCIC vide order dated 03/06/2014 and also for furnishing him incomplete and false information and on those grounds the Complainant has prayed for relief which are in penal nature. It is also contention of the Complainant that Opponent refuse to divulge the procedure of recruiting staff by PWD LSS.
15. Point arises for my determination whether order of this Commission have been complied within time.
16. Para 22 of the order of the Commission dated 3/06/2014 reveals that there were direction to supply information within one month from the date of receipt from the order. The record shows copy of the order dated 03/06/2014 was sent to the parties by outward No. Appeal 94/SIC/2013/680 dated 19/08/2014. The information was furnished to the Complainant on 11/07/2014 well within stipulated time. It was also promptly informed to the Complainant by letter dated 23/06/2014 that is information is pertaining to his RTI application dated 04/03/2013 and 28/03/2013 and there by requesting Complainant to collect the same. The

information furnished to the Complainant by Respondent No. 1 and Respondent No. 2 shows that all the queries/ information were answered by the Respondents. Both the Respondent have shown their bonafides in furnishing the information.

17. The prayer of the appellant are in the nature of penal action either by granting of penalty or by compensation . The strength of evidence is required in such proceedings is laid down by the Hon'ble High Court of Bombay in writ petition No. 205 /2007, **Shri A.A. parulekar V/s Goa State information Commissioner and others wherein it is held "**

11 The order of penalty for failure in akin in action under criminal law. It is necessary to ensure that the failure to supply the information is either intential or deliberate".

Yet in another decision Hon'ble High Court of Punjab and Haryana at Chandigarh in writ petition No. 6504 of 2009; **State of Punjab and others V/s State information Commission Punjab has held at para 3**

" The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to obtain. **It is not every delay that should be visited with penalty".**

18. Since the Complainant had claimed false and incomplete information was provided to him, the onus was on him to prove the same. By remaining continuous absence, he has failed to discharge his burden.

19. Ratios laid down in above rulings squarely applies to the facts of present case. The Complainant was unable to substantiate his case. On the contrary the Respondent PIO have shown by documentary evidence that the Order of this Commission have been complied within time and as such I am unable to concealed to the request of the Complainant. I am also of opinion the facts of the case doesnot warrant for imposing of Penalty. In the above given circumstances the following order is passed.

20. The Complaint stands dismissed. Proceeding closed.

Authenticated copies of the Order 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.

Proceedings closed.

Pronounced in the open court.

Sd/-

(Pratima K. Vernekar)

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

Kk/-fn