

GOA STATE INFORMATION COMMISSION

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

Penalty No.18/2017
in
Complaint No.26 /SCIC/2016

Mr. Kamlakar S. Gadkar,
R/o Sacobhat, Per-Seraulim,
P.O. Colva Salcete –Goa. Complainant.

V/s

- 1)The Public Information Officer,
Shri Vishal C. Kundaikar,
Mamlatdar of Salcete Taluka,
Salcete –Goa.
- 2) Then PIO
MS. Triveni P. Velip
Mamlatdar of Salcete Taluka,
Salcete –Goa. Respondents.

CORAM: Shri Prashant S.P. Tendolkar,

State Chief Information Commissioner,

Disposed on: 29/5/2017

ORDER

- 1) This Commission while disposing the above complaint vide order, dated 27/02/2017, has directed the PIO as also the then PIO, the respondents herein, to show cause as to why action as contemplated under section 20(1) and/or 20(2) of The Right to Information Act 2005, should not be initiated against them.
- 2) In response to the said notice the PIO, Shri Vishal Kundaikar filed his reply on 05/04/2017 and an additional reply on 21/04/2017, while the then PIO Ms Triveni Velip filed her reply on 05/04/2017.
- 3) The parties were heard and the documents in support of the rival contentions were perused.
- 4) On going through the records it is found that the proceedings involve two applications filed by complainant. The first one, dated 29/01/2013

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and the second one dated 02/03/2015. It is on record that the then PIO Ms. Triveni Velip, continued to be the PIO of the concerned Public Authority till 01/12/2013 and the present PIO has taken charge on 02/12/2013. Hence it is found necessary to decide the liability of the PIO with reference to the respective application.

5) The application u/s 6(1) filed on 29/01/2013 was transferred to the then PIO, the respondent no.2 herein on 05/02/2013. As the application was not clear, clarification was sought and as the concerned file was not traced, the complainant was informed that the information shall be issued after tracing the file. These facts are not in dispute as are pleaded by the complainant in this complaint as also by the reply of then PIO herein. On going through the records it is found that thereafter the complainant did not take any steps till 02/03/2015.

6) Under the Right to Information Act 2005, the seeker, if aggrieved by the action of any Public Authority, has been granted a forum for redressal. Section 19 (1) of the act provides that in case the application u/s 6(1) is not responded within stipulated time of 30 days., the party can seek his grievance redressed by first appeal and in case aggrieved by the order of first appellate authority, to approach the Commission in second appeal u/s 19(3) of the act.

In the present case, with reference to the first application dated 29/01/2013, the complainant was informed that the file was not traceable and that the information would be furnished after tracing the same, the complainant had no grievance against it and hence he did not file any appeal. He allowed to pass the time under said orders of PIO, thereby making his application dated 09/01/2013 in fructuous by efflux of time. In other words the complainant had submitted to the orders of the PIO and had no grievance against the same. Considering the above situation I find no malafide on the part of then PIO Ms. Triveni Velip for the purpose of invoking the powers for imposing penalty.

7. Coming to the second application, dated 02/03/2015, it is the contention of the present PIO, Shri Vishal Kundaikar, the respondent

no.2 herein, that by said second application, same information as was sought by the earlier one ,dated 29/01/2013 was sought. I find that this contention as not sustainable, as the seeker is entitled to have the information at any time and in this case on the earlier occasion the same was not available to him as the file was not traceable.

8) According to Complainant the information was not furnished to him on the second application he filed first appeal on 6th July 2015. Which appeal was subsequently revised vide first appeal dated 27/07/2015. This first appeal was finally disposed by the first appellate Authority by order dated 27/11/2015, allowing the same.

9) In respect of said first appeal the PIO has contended that the said appeal was filed after the time fixed under the act. Though I find this fact as correct, the same cannot be raised now as the appeal has been disposed and it presupposes that the delay has been condoned.

10) It is the contention of the PIO, Shri Vishal Kundaikar that the present proceedings is also bared by the limitation. However I am unable to subscribe to the said version. The present proceeding is a complaint and the act has not fixed any period for filing complaint though the same is provided for appeals. No doubt delay in filing may raise doubt on the intention of the complainant approaching the Commission.

The only point therefore which is required to be decided is whether the delay caused in furnishing information is deliberate and intentional.

11) During the pendency of the complaint in the course of hearing on 04/08/2016, the PIO had submitted that the information as was sought was not found in the records of mamlatdar and that in case complainant assist him in locating the same he will try to furnish the same. It was accordingly agreed that the complainant shall visit the office of PIO and assist him by giving further details regarding the information sought. Accordingly the concerned information was identified and furnished to the complainant on 12/08/2016. The fact

that the complainant has assisted the PIO to identify the information and that it is received by complainant on 12/08/2016 is not disputed.

12) It is thus seen from the records that the information as sought for could be furnished only after the same was properly identified and located by the PIO only with the assistance of Complainant. In other words the information sought required further identification/clarification by the complainant for its retrieval. Hence the lack of clarity in the information sought has also contributed to the delay.

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) In the light of the above ration, I do not find that the delay caused in furnishing information was deliberate or intentional.

15) In yet another case before the Hon'ble High Court of Punjab & Haryana (***Civil Writ Petition no.6504 of 2009, State of Punjab V/S State Information Commissioner, Punjab and others***) it is observed :

"3. The penalty provisions under section20 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. If there is a delay and it is explained the question will only revolve on whether the explanation is acceptable or not.-----"

16) Considering the ratio as laid down by the Hon'ble High Court of Bombay and by High Court of Punjab & Haryana I find that the delay

that has occurred in furnishing the information is also due to lack of clarity in the application and hence the same cannot be attributed solely to the PIO. I also find that the reply of the then PIO, M/s Triveni Velip that the information was not available due to non availability of the file, as convincing.

I therefore find no deliberate or intentional delay on the part of either of the respondents to invoke the rights under either u/s 20(1) and/or 20(2) of the act.

In facts and circumstances I hereby withdraw the notice, dated 27/02/2017, issued to the then PIO, M/s Triveni Velip and to PIO, Shri Vishal Kundaikar, the respondents herein. The proceedings stands closed.

Order to be communicated.

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