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

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

Penalty No.03/2017
In
Appeal No.12/2016

Shri R. Pinto,
F/6 Chamundi Apartments,
Martires Dias Road,
Margao –Goa. ..... Appellant.

V/s

1) The Member Secretary,
South Goa Planning & Development Authority,
4th Floor, Osia Commercial Complex,
Margao-Goa.
2) The Chairman,
South Goa Planning and Development Authority,
4th floor, Osia Commercial Complex,
Margao –Goa. ..... Respondent.

PASSED ON: 14/7/2017

O R D E R

1) While disposing the above appeal by order dated 27/01/2017, this Commission had directed the PIO to show cause as to why action as contemplated under section 20(1) and/or 20(2) of The Right to Information Act 2005(Act) should not be initiated against him. Accordingly notice was issued and the same was replied by the present PIO, Shri Ashok Kumar vide his affidavit in reply dated 06/03/2017.

2) By said reply, it is contended by him that as per the records the reply to the appellant's application dated 5/02/2015 was sent to the appellant by the SGPDA vide

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letter dated 20/02/2015 and out warded on 23/02/2015. It is further according to him that the copy of the said letter contained an endorsement of the appellant, dated 23/06/2015 by which he concluded that the letter dated 23/02/2015 was received by the appellant. In his said affidavit it is further contended by him that at the relevant time one Shri Vinod Kumar was the PIO and hence it would be appropriate to issue notice to him. Hence he was directed to notify the then PIO Shri Vinod kumar Chandra.

3) Accordingly said Shri Chandra filed his affidavit in reply dated 18/03/2017. Vide said affidavit he admitted that he was the PIO at the relevant time. According to him the appellant application dated 2/05/2015 was replied by him by his letter dated 20/02/2015. A copy of the said reply is annexed by the then PIO to his affidavit. By referring to the outward register already produced by the present PIO Shri Ashok Kumar, Shri Chandra stated that the said letter, dated 20/02/2015 was out warded on 23/2/2015. He further stated that the copy of the said letter contain an endorsement signed by the appellant which according to him is a signature of the appellant towards the payment made by him. Shri Chandra has also produced on record the copy of the receipt, dated 23/06/2015 toward payment of Rs.16/- purportedly made by the appellant. He has further averred that he is not personally aware whether the signature contained on the said letter, dated 22/02/2015 is that of the appellant or not as the signature was taken by the concerned clerk.

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4) In counter the appellant has filed his affidavit in rejoinder, dated 07/04/2017. As per the said affidavit in rejoinder, the submissions of the then PIO is a lie and he is making an attempt to justify and cover-up his act of omission and commissions for failure to grant requisite information within the prescribed time. The appellant has denied that the signature as contained on the said letter 20/02/2015 as pertain to him and stated that if any receipt was issued to him on 23/06/2015, the said receipt cannot be with the respondent authority. He has further stated that the said letter also does not reflect as to what is the amount paid, if the same pertains to the said receipt dated 23/06/2015.

The appellant has further stated in the said affidavit in rejoinder that the mention of O/C on the letter, dated 20/02/2015 and the receipt dated 23/06/2015 are act of forgery as the said receipt pertains to the month of June 2015 which is about four months later than the said application and by which time the application would have lapsed. He has further submitted that the averments in the affidavit of the present PIO, Shri Ashok Kumar that the said letter was send by ordinary post is contrary to the contention of the then PIO Shri Chandra that the said letter was delivered by hand delivery. According to the appellant as no notice was ever issued, no question of collecting the information arise.

5) The then PIO and also the present PIO through his Advocate has filed the written submission. Similarly the appellant has also filed his written arguments.

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6) I have considered the records as also the statement made in the affidavits. Considering the rival contention of the parties it is seen that the appellant contends that the information was not furnished within time. The appellant has disputed the correspondence, more particularly the letter dated 20/02/2015, purportedly posted on 23/02/3015 and the receipt dated 23/06/2915. The appellant has also alleged that his signature on the said letter, dated 20/02/2015 is forged.

7) Considering the above contentions and for the purpose of arriving at a conclusion as to whether the PIO has responded to the appellant's application within time, it would be necessary to consider the genuineness of the correspondence as relied upon by the respondent PIO, more particularly the said letter dated 20/02/2015 purported to have been posted on 23/02/2015 and the receipt dated 23/06/2015. In case the same are found to be genuine, then the action of PIO can be held as bonafide.

8) I have considered the provisions of the act. The act does not confer any jurisdiction to the commission to adjudicate the on the genuineness of the documents before it. Hon'ble High Court of Delhi in the case of ***HANSI RAWAT & ANR V/S PUNJAB NATIONAL BANK & ORS LPA No.785/2012,*** while dealing with the power of the commission under the act at para 6 has held:

> *"6. The proceedings under the RTI Act do not entail detailed adjudication of the said aspects. The dispute relating to dismissal of the appellant*

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No.2 from the employment of the respondent Bank is admittedly pending consideration before the appropriate fora. The purport of the RTI Act is to enable the appellants to effectively pursue the said dispute. The question, as to what inference if any is to be drawn from the response of the PIO of the respondent Bank to the RTI application of the appellants, is to be drawn in the said proceedings and as aforesaid the proceedings under the RTI Act cannot be converted into proceedings for adjudication of disputes as to the correctness of the information furnished. ----------"

In the above situation this commission can deal with the relief of the appellant for imposition of penalty on PIO, only after the genuineness of the said records are decided. Hence I find it appropriate to direct the concerned authority viz. Dy. Town Planner The Town and Country Planning Department South to inquire into the allegations of appellant against the then PIO, Shri Vinod kumar Chandra, of forgery of the records.

9) In the circumstances the Dy. town Planner, Town and Country Planning Department, South Goa, is hereby directed to conduct inquiry, either in person or through any other officer appointed by him, and to find "*whether the said letter dated 20/02/2015 purportedly posted on 23/2/2015, by the office of the SGPDA South Goa, and the receipt, dated 23/6/2015 are genuine and from the records of the SGPDA.*"

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Inquiry to be concluded within three months from the date of receipt of the order by office of Dy. Town Planner, South Goa Margao.

While conducting such inquiry the inquiry office shall allow the appellant herein to participate in the proceedings if he wish to and the report of the inquiry be furnished to the appellant and then PIO, Shri Vinod Kumar Chandra.

The present penalty proceedings are disposed accordingly.

Rights of the appellant to file appropriate proceedings after conclusion of the inquiry are kept open.

The order be communicated to the parties.

A copy of this order be sent to Dy. Town Planner, South Goa, Margao for information and necessary action.

Proceeding closed.

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

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

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

Penalty No.03/2017
(Erroneously Numbered as Penalty No.04/2017)
IN
Appeal No.12/2016

Shri R. Pinto,
F/6 Chamundi Apartments,
Martires Dias Road,
Margao –Goa. ….. Appellant.

V/s

1) The Member Secretary,
South Goa Planning & Development Authority,
4th Floor, Osia Commercial Complex,
Margao-Goa.
2) The Chairman,
South Goa Planning and Development Authority,
4th floor, Osia Commercial Complex,
Margao –Goa. ….. Respondent.

CORRIGENDUM TO ORDER DATED 14/07/2017

Date: 07/09/2017

1) This Commission at para (9) of the order, dated 14/07/2017 passed in the above matter has directed as under:

> **"9) In the circumstances the Dy. town Planner, Town and Country Planning Department, South Goa, is hereby directed to conduct inquiry, either in person or through any other officer appointed by him, and to find "*whether the said letter dated 20/02/2015 purportedly posted on 23/2/2015, by the office of the***

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SGPDA South Goa, and the receipt, dated 23/6/2015 are genuine and from the records of the SGPDA."

Inquiry to be concluded within three months from the date of receipt of the order by office of Dy. Town Planner, South Goa Margao.

While conducting such inquiry the inquiry office shall allow the appellant herein to participate in the proceedings if he wish to and the report of the inquiry be furnished to the appellant and then PIO, Shri Vinod Kumar Chandra.

The present penalty proceedings are disposed accordingly.

Rights of the appellant to file appropriate proceedings after conclusion of the inquiry are kept open."

2) On receipt of the said order Senior Town Planner Margao, Goa by his letter No.1/79/TPN/17/2964, dated 31/07/2017 addressed to the Under Secretary, has informed that the Town & Country Planning Department has office of Senior Town Planner at Margao and not the office of the Dy. Town Planner and that no Dy. Town planner is posted in said office. The said letter was placed before me for orders.

3) I have considered the said representation of the Senior Town Planner vide said letter, dated 31/07/2017. By said

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order dated 14/07/2017, the inquiry was ordered to be conducted by holding that Dy. Town Planner as the head of office. However, considering the fact that the said office is headed by Senior Town Planner, the said order is required to be implemented through him. Consequently the officer who is directed to conduct the inquiry viz. "Dy. Town Planner, Town and Country Planning Department South Goa," as mentioned in para (9) of the said order is required to be deemed as "Senior Town Planner Town & Country Planning Department, Margao –Goa" and para (9) of the said order dated 14/07/2017 which contains the operative part shall stand substituted with the following para (9).

"(9) In the circumstances the Senior Town Planner, Town and Country Planning Department, South Goa, is hereby directed to conduct inquiry, either in person or through any other officer appointed by him, and to find "*whether the said letter dated 20/02/2015 purportedly posted on 23/2/2015, by the office of the SGPDA South Goa, and the receipt, dated 23/6/2015 are genuine and from the records of the SGPDA.*"

Inquiry to be concluded within three months from the date of receipt of the order by office of Senior Town Planner, South Goa Margao.

While conducting such inquiry the inquiry office shall allow the appellant herein to participate in the proceedings if he wish to and the report of the inquiry be furnished to the

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appellant and then PIO, Shri Vinod Kumar Chandra.

The present penalty proceedings are disposed accordingly.

Rights of the appellant to file appropriate proceedings after conclusion of the inquiry are kept open."

4) In view of this corrigendum, the period of three months for concluding the inquiry, as fixed in said order, dated 14/07/2017, shall commence from the date of receipt of this corrigendum.

5)The bench clerk has also put up a note that the above proceedings is wrongly numbered in the file as Penalty No.4/2017, and it should be deemed and read as Penalty No.03/2017.

6) I have also considered the representation of the bench clerk and also considered the records. In view of the said error vis a vis the number recorded in the register the case number of this proceedings be recorded as Penalty No.3 of 2017 and for the purpose of clarification in the cause title the number of present proceedings be recorded as "Penalty No.03 of 2017 (erroneously numbered as Penalty No.04/2017)"

7) The rest of the contents of the said order dated 14/07/2017 shall remain unchanged and this Corrigendum shall be read alongwith the said order dated 14/07/2017.

Copy of this corrigendum be sent to the parties free of cost.

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