

GOA STATE INFORMATION COMMISSION

Seventh Floor, Kamat Towers, Patto, Panaji – Goa.

CORAM: Shri Prashant S. P. Tendolkar
Chief Information Commissioner

Complaint No. 47/SCIC/2016

Franki Monteiro,
H. No.501, Devote,
Loutolim, Salcete,

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Complainant

V/s

1. The Public Information Officer,
The Administrator of Comunidades, South,
Margao - Goa,

2. The First Appellate Authority,
The Additional Collector-I,
South Goa, Margao.

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Respondents

Filed on : 26/10/2016
Disposed On: 05/05/2017

O R D E R

1) FACTS :

- a) The Complainant herein by his application, dated 03/08/2016 filed u/s 6(1) of The Right to Information Act 2005 (Act) sought certain information from the Respondent No.1, PIO under four points therein.
- b) The said application was not responded to by the PIO within time and such deeming the same as refusal, Complainant filed first appeal to the Respondent No.2 on 07/09/2016.
- c) The First Appellate (F.A.A.) by order, dated 04/10/2016 disposed the said appeal on the ground that the information has been furnished to the Complainant.
- d) The Complainant has therefore landed before this Commission by way of complaint u/s 18 of the Act.

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e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 07/02/2017 had filed a reply to the appeal. Additional reply was filed on 27/03/2017, submitting that the information as was sought is furnished to the Complainant. Complainant was therefore directed to verify whether such information is received, to which he sought time and on 05/04/2017, the Complainant submitted that the information as was furnished on 27/03/2017, to him covers the entire information. However he submitted that the issue of penalty be taken up.

The PIO filed reply to penalty proceedings on 27/03/2017.

2) **FINDINGS :**

a) Considering the fact that the information as was sought is received by Complainant , the only thing that is required to be considered herein is whether the prayer of the Complainant for penalty against Respondent No.2 is maintainable.

b) In the pleadings of the complainant, interalia, it is the contention of complainant that during the hearing of first appeal filed by him, the application filed by him under section 6(1) of the act was clarified. It is further contention of complainant that the respondent No.2, as FAA, insisted on passing of the order dismissing the appeal with direction to complainant to file fresh application and the complainant insisted for an opportunity to at least file his written submissions on record. It is also the contention for complainant in paras (13) and (14) of the complaint that the dismissal of the appeal by respondent No.2 was arbitrary and that no opportunity was given to complainant, which complainant attributed to some personal grudge. With these allegations the complainant has prayed for penalty in terms of section 20(1) AND 20(2) against Respondent No.2. He has also prayed for compensation from respondent No.2, i.e. the FAA.

(c) Section (18) of the act deals with complaints and section 20 deals with the penalties. Under the act. Section (20) of the act reads:

“20. Penalties._____ (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request of obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

d) If one analyse the intent of this section it is clear that the Commissions and omissions under said section grants powers to penalize PIO. There are no express powers under the said sections (18) or under section (20) of the act, either to penalize the FAA or order compensation.

e) This Commission, while dealing with the cases, either complaints or appeals are required to function as per the provision of the act. Commission cannot cross over the provision and grant any relief which is not provided for. As stated earlier the act does not provide for any penalty or compensation against FAA.

f) Considering the above limitation, I hold that the relief as are prayed by the complainant are beyond my powers and competence and hence cannot be granted.

g) However considering the contentions of the complainant and on perusal of the records, I find that the respondent No.2, as the FAA ought to have granted opportunity to the complainant to put forth his say on the version of the PIO before him. In this case the respondent No. 2 has shown unwanted haste while dealing with the appeal. Hence in exercise of my powers under section 25 (5) of the act I recommend that in cases of first appeal, the FAA should give opportunity to the parties before it to put forth their cases and after hearing the parties to proceed for disposal of the cases and by strictly adhering of the principals of natural justice.

In the above circumstances I dispose the present complaint, with order as under:

O R D E R

The complaint is dismissed, with the above observations and recommendations.

Parties to be notified.

Pronounced in open proceedings.

Sd/-

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