

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

Complaint No. 23/SCIC/2016

Shri Jawaharlal T. Shetye,
H. No.35/A, Ward No.II,
KHorlim Mapusa.

.....

Complainant

V/S

The Public Information Officer/M.E
(Hussein Shah Muzawar)
Mapusa Municipal Council,
Mapusa-Goa.

AND

The First Appellate Authority/CO
(Raju Gawas)
Mapusa Municipal Council,
Mapusa-Goa.

.....

Respondents

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

Filed on:10/3/2016

Disposed on :25/5/2017

O R D E R

1. The complainant has approached this commission with this complaint assailing the conduct of PIO of not responding his application, dated 14/12/2015, filed by him under section 6(1) of the Right to Information Act 2005(Act for short) as also that of the first appellate authority in not disposing his first appeal filed under section 19(1) of the act.

...1/-

2. Considering the said contentions of the complainant this commission by notice, dated 13/1/2017, directed the Public Information officer (PIO) to show cause as to why action, as contemplated u/s 20(1) and/or (2) of The Right to Information Act 2005(ACT) should not be initiated against him.

3. The said notice was replied by the PIO on 21/3/2017. In the said reply it is the contention of the PIO that in addition to his routine work, the work, of shifting of Municipal premises was started and hence there was no time to comply with the application filed by appellant. In view of the shifting, the normal functioning of the council was hampered.

According to PIO he has additional charge of Bicholim Municipality and hence the application remained to be answered. He further replied that the delay was not with the intention of causing hardship or inconvenience to the appellant but was genuine.

In addition to the above grounds the PIO has also submitted that the reasons for not furnishing as that the same information was also sought by the complainant on earlier occasions and that after obtaining the clarification the information sought has been furnished.

4. The complainant has filed the arguments in writing. The complainant has not denied that the PIO was granted additional charge and that the office of the Public authority was also under shifting. The complainant has also produced the concerned documents, which in fact substantiate the

contention of the PIO. The sole allegation of the complainant is that the PIO had sufficient staff under him to compile the information for the purpose of being furnished to the complainant.

The complainant has also submitted that the said public authority has not complied with the provisions of section 4 and 5 of the act and has also submitted the scenario in other part of the country.

5) I have considered the records as also the submissions of the parties. 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."

6) The fact regarding the shifting of office and having additional duties are not disputed by the complainant. PIO has expressed the circumstances under which he was functioning then. In the present case though there is delay in furnishing information on the part of PIO, I find no cogent and convincing evidence to attribute the delay exclusively to the PIO and that it was intentional, which is *sine qua non* for invoking powers under the act for imposition of penalty as held in the case of *A.A. Parulekar (supra)*. In the result the PIO is entitled for benefit of doubt.

7) The complainant in his complaint has also prayed the commission to take note of the harassment, stress and strain caused to him at the hands of PIO and request for compensation. Though I find such an issue requires consideration but considering the fact that in a similar case filed by the complainant herein being an appeal No.37 of 2016, a penalty proceedings was drawn being penalty no.11 of 2016. In the said proceedings this commission after concluding that there is substance in said claim, has granted compensation to the complainant. However the same was refused by the complainant.

8) Considering the above circumstances and after coming to the conclusion that the failure to supply the information is neither intentional nor deliberate, the cause shown by PIO as sufficient to exonerate him of his liability and consequently the notice, dated 13/1/2017 is withdrawn. Proceedings closed.

Pronounced in the open proceedings.

Sd/-

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