

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

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

Appeal No. 164/2018/SIC-I

Shri Vinod Palkar alias Martins,
H.No.172/A, Opp. IDC Bldg.,
Nauxim, Bambolim.

...Appellant

V/s

- 1) Public Information Officer,
Village Panchayat Secretary,
Village Panchayat Bambolim Talaulim,
Tiswadi-Goa.
- 2) First Appellate Authority,
Block development Officer,
Junta House Annexe,
Panaji- Goa.

...Respondents

Filed on: 09/07/2018

Disposed on: 12/12/2018

1) Facts:

- a) The appellant herein by his application, dated 07/03/2018 filed u/s 6(1) of the Right to Information Act 2005 (Act) sought certain information from the Respondent No.1, PIO under several points therein.
- b) The said application was replied on 26/03/2018, interalia requiring appellant to pay further fees of Rs. 36894/- as calculated therein and further informing that the copies will be issued within 15 days from the date of such deposit. Accordingly appellant deposited such demanded amount on 04/04/2018.
- c) According to appellant the information as sought was not furnished within the promised period and hence he reminded PIO vide his letter, dated 24/04/2018 to furnish the information which is not furnished within 15 days as

...2/-

promised. The said letter was replied on 25/04/2018 by PIO interalia informing appellant that large number of plans are required to be furnished and that every alternate day there is power failure. Thus as the said information was not received by appellant, deeming the same as refusal appellant filed first appeal to the respondent No.2.

- d) The First Appellate Authority (FAA) by order, dated 27/04/2018 dismissed the said appeal.
- e) The appellant has therefore landed before this commission in this second appeal u/s 19(3) of the Act/ by way of complaint u/s 18 of the act.
- f) Notices were issued to the parties, pursuant to which they appeared. The PIO on 07/08/2018 filed reply to the appeal. Arguments were heard.
- g) In the course of submissions of the appellant, he submitted that the information as was sought is furnished to him and he is not pressing for said prayer. Further submitted that as the information was furnished beyond the period of thirty (30) days as prescribed under section 7(1) of the act he is entitled to have the same free of cost and the amount of Rs. 36894/- paid by him is required to be refunded and also for imposition of penalty @ Rs.250/- per day.
- h) In his submissions the PIO submitted that on receipt of application, he verified the availability of information and promptly informed the appellant of the probable charges. According to him on receipt of charges he wanted to take the Xerox copies but due to constant power supply he could not take the same and hence was delay in supplying information. PIO also filed on record the various copies of

...3/-

emails sent by electricity department to news paper intimating regarding the shutdown of powers in the locality.

- i) Initially this matter was allotted to information commissioner, however as she felt that an intricate issue of law arises herein the same was referred to me. The law regarding the issue involved in the matter is well defined and clarified, hence I find no grounds to refer the matter to bench.

2) FINDINGS:

- a) Perused the records and considered the pleadings and submissions of the parties. The issue involved herein is “whether the appellant is entitled to refund of the fees due to delay in furnishing information”.
- b) The present appeal is filed u/s 19(3) of the act, which provides for second appeal against the order passed by FAA u/s 19(1). A joint reading of section 19(1) with 19(3) reads)

“19. Appeal.— (1) Any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

...4/-

(2).....

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.”

c) From the above, it is seen that the second appeal to the Commission would lie only against the decision or the FAA in the first appeal. The first appeal to FAA lies only in cases where no decision is received from the PIO within time contemplated u/s 7(1) of the act or in case where he is aggrieved by the decision of the PIO. In this case the PIO had informed his decision to furnish the information as also the estimated fees. The appellant has no grievance either against his communication for furnishing information or the fees of information fees demanded in ordinary course. He has in fact paid the fees as demanded without any dispute.

In the circumstances I find that no appeal would lie as not provided under the act under section 19(2) or 19(3) of the act.

d) However this by itself does not mean that in case any unreasonable fees are demanded the same cannot be disputed by the applicant. Act provides relief to the seeker by a complaint u/s 18 of the act, in cases where he has paid the amount which he considers un reasonable. Such a provision is made u/s 18(1) (d) of the act in the following words:

18. Powers and function of Information Commissions._____

(1) Subject to the provision of this Act, it shall be the duty of the Central Information Commission or a State Information Commission, as the case may be, to receive and inquire into complaint from any person,___

a)

b).....

c).....

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

Hence this matter is also considered as a complaint for considering his grievance.

e)The procedure to decide a complaint or and appeal is provided u/s (20) of the act. Said section grants powers to the commission to impose penalty under sub section (1) or recommend disciplinary proceedings under sub section (2). Such powers can be exercised by commission only in case where there is unreasonable malafide refusal of information.

f) ***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.”

g)In the present case undisputedly the application u/s 6(1) dated 07/03/2018 was responded within time on

...6/-

26/03/2018. The amount was deposited on 04/04/2018. Thus the time for furnishing of information fell due after 15 days i.e. on 20/04/2018. By adding the time taken for deposit of the fees i.e. between 26/03/2018 till 04/04/2018 i.e. 10 days, the date for furnishing information fell due on 1st May 2018. The offer to collect information was sent on 08/05/2018. Thus there is delay of about 7 days in furnishing information. From the records it is clear that the information sought was voluminous running in about 8957 pages and 380 plans.

h)The act envisages dispensation of information to show transparency in functioning of the Public Authority. In that direction the dispensation of information is a rule and with holding of the same an exception. Hon'ble High Court of Punjab and Haryana in the case of ***Dalbir singh V/S Chief Information Commissioner Haryana & others WP@No.18694 of 2011, it is observed:***

"There appears to be no justification to deny the information on this ground. Suffice it to mention that if the records are bulky or compilation of the information is likely to take some time, the Information Officer might be well within his right to seek extension of time in supply the said information, expenses for which are obviously to be borne by the petitioner."

i) *While dealing with the scope of dispensing voluminous information the Hon'ble Apex Court in the case of **Central Board of Secondary Education & another V/s Aditya Bandopadhyay** (Civil Appeal no.6454 of 2011) has observed :*

"-----The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their

time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing „information furnishing“, at the cost of their normal and regular duties.”

j)In the present case the PIO has filed on record the various correspondences showing the power failure of the locality during the said period. Thus the delay in furnishing cannot be held as intentional or deliberate. The same was beyond the control of the PIO. By applying the ratio as laid down by the High Court of Punjab and Haryana and the anxiety as expressed by the Hon'ble Supreme Court, I find that in the peculiar circumstances of this case the amount of fees as paid by appellant cannot be ordered to be refunded, though there is marginal delay in furnishing the information. The delay was due to the circumstances, which cannot be attributed either to PIO or to the authority. I therefore find no grounds to grant the relief either as an appeal or as a complaint.

O R D E R

Appeal is dismissed. Proceedings closed. Notify parties.

Pronounced in open hearing.

Sd/-

(P. S. P. Tendolkar)

State Chief Information Commissioner
Goa State Information Commission
Panaji -Goa