

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

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

Appeal NO.152/2017/CIC

Joe Tauro,
C/o Bonny Fernandes,
H.No.#1288, Near Blue Lagoon,
Baman Vaddo, Dongar Marg, Siolim,
Pin:403517. Appellant

V/s

- 1) Shri Rajesh Naik,
Town Planner,
Town & Country Planning Department,
Mapusa.
- 2) The Public Information Officer,
Shri S. P. Suralkar,
Dy. Town Planner,
Town & Country Planning Department,
Mapusa- Goa. Respondents

Filed on:08/09/2017

Decided on:03/07/2018

O R D E R

1) The appellant herein filed an application dated 30/03/2017 u/s 6(1) of the Right to Information Act 2005 (Act for short) seeking a copy of the complaint received from one Shri Anandrao T. Shirodkar and others. According to appellant said application was not responded by PIO within time and hence appellant filed first appeal to the respondent No.1 herein being the First Appellate Authority (FAA).

2) It is the contention of appellant that the FAA failed to dispose the First appeal within stipulated time and hence has approached this Commission in this second appeal u/s 19(3) of the act.

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In this appeal the appellant has prayed for a direction to the FAA/PIO to process his request for document.

3) On issuing notice to the parties they filed replies. The appellant remained absent but was represented by his wife. In the course of hearing on 07/12/2017 the PIO filed his reply alongwith the copy of the purported information. The copy of such information was given to the representative of the appellant, who in turn, during the hearing on 16/05/2018 confirmed having received the required information. On the said occasion she submitted that the penalty be also considered against the PIO.

4) On perusal of the appeal memo it is seen that the appellant has prayed only for a direction for process of the request for document of appellant. He has not sought any other relief. However considering the powers granted to Commission the case was examined.

5) In reply to the notice, in brief the PIO has stated that on receipt of the application u/s 6(1) of the act from the appellant it was marked to the APIO so as to put up the same and dispose within stipulated time. It is further contention of PIO that the APIO has failed to put up the same before him and the application could not be disposed in time. It is further contention of PIO that in view of said lapse on the part of APIO a memo was sent to APIO Shri Divkar on 16/11/2017, who has replied the same by response dated 21/11/2017 interalia giving the details of situation and the reason for not furnishing the information in time.

According to APIO vide his reply to memo the appellant had filed four applications u/s 6(1) of the act seeking same or similar information one after the other and in the process of searching the files he lost the track and file was misplaced. According to said APIO the delay was not malafied nor there was any intention for hiding the information. The APIO has prayed for condoning the delay in providing information and has agreed to deal with the matters under RTI with priority.

6) In his affidavit in reply the FAA has interalia submitted that the First appeal was not placed before him for disposal and hence could not be heard. In any case as the time for disposal of first appeal has lapsed the appellant has approached in second appeal and no prejudice has occurred to him.

7) The act provides for penalty against the PIO for causing delay in supplying information belatedly. However such delay should be intentional and deliberate. In the present case the PIO has shown the grounds for delay in furnishing information. The PIO has affirmed the same and has expressed remorse for not dealing with the request in time.

The Hon'ble High Court of Delhi in the case of **Ankur Mutreja V/s Delhi University (LPA764/2011)** which dealing with scope of penalty under the act has held:

8. It is clear from the language of Section 20(1) that only the opinion, whether the Information Officer has "without any reasonable cause" refused to receive the application for information or not furnished information within the prescribed time or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information etc., has to be formed "at the

time of deciding the appeal". The proviso to Section 20(1) of the Act further requires the CIC to, after forming such opinion and before imposing any penalty, hear the Information officer against whom penalty is proposed.

9. The aforesaid procedure is even otherwise in consonance with logic and settled legal procedures. At the stage of allowing the appeal the CIC can only form an opinion as to the intentional violation if any by the Information Officer of the provisions of the Act. Significantly, imposition of penalty does not follow every violation of the Act but only such violations as are without reasonable cause, intentional and malafide."

9) In the present case the PIO has made out the reason for delay which are affirmed by the APIO. The APIO has expressed his remorse for his lapse. Commission thus finds a reasonable and probable cause for delay. In this situation commission find no grounds to invoke the powers granted to the Commission u/s 20(2) and/or 20(2) of the Act.

10) In the above circumstances as the sole relief for direction to furnish information has become redundant, the present appeal does not survive.

However the APIO is directed to be vigilant hence forth in dealing with RTI matters and any lapse on his part hence forth shall be dealt with seriously.

Notify parties.

Proceedings closed.

Pronounced in open proceedings.

Sd/-
(Shri. Prashant S.P. Tendolkar)
Chief Information Commissioner
Goa State Information Commission
Panaji –Goa