

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

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

Complaint No.21/2018/CIC

Smt. Anjani W/o Late Gopal Tilnaik,
H.No. 153, Vazarwada Podocem,
Poriem Sattari Goa. Complainant

V/s

The Public Information Officer,
The Secretary,
Village Panchayat Poriem,
Sattari Goa. Respondent

Filed on 16/04/2018

Decided on:20/09/2018

O R D E R

1) According to complainant, her application u/s 6(1) of the Right to Information Act 2005, (herein after referred to as Act) dated 06/11/2017 seeking certain information was not responded by PIO and hence she filed first appeal to First Appellate Authority (FAA) on 21/12/2017. The said first appeal was disposed on 27/02/2018, directing the PIO to furnish the information to the complainant. It is further the case of complainant that as the said order of FAA was not complied with, the present complaint is filed seeking imposition of penalty.

2) On the other hand the case of the PIO is that the application dated 06/11/2017 filed u/s 6(1) of the act was responded vide letter, dated 01/12/2017 which was sent by post on 01/12/2017. That by said letter the PIO has informed complainant that the information was kept ready and can be collected during office hours on payment of necessary fees.

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It is further the case of the PIO that the letter, dated 01/12/2017 sent to the complainant was returned to the sender as unclaimed. That the complainant appeared on 13/12/2017 and also on 15/12//2017, however though the information was offered by PIO subject to payment of fees, the complainant refused to pay the fees. According to PIO in the first appeal also the said facts were put forth and the FAA, on being convinced, passed the appropriate orders. The PIO has further submitted that on 11/04/2018 and 13/04/2018, though the complainant visited the office, she insisted that the information should be given free of cost and only on 25/04/2018 she paid the fees and collected the information.

In support of the contention of the PIO has filed on record the letter, dated 01/12/2017, alongwith the envelop. He has also attached the letter dated 25/04/2018 containing the information as was furnished to the complainant.

3) In view of the reply of PIO that the reply under section 7(1) was sent on 01/12/2017, he was directed to produce the said envelop which was sent to complainant. Accordingly the same was produced. The said envelop was opened in the course of hearing on 24/07/2018 in the advocate for PIO and the appellant and her representative, under an endorsement made therein. Said envelop contained a letter as dated "01/12/2015". According to Adv. Shri Marathe appearing for PIO, it is "01/12/2017" wrongly typed as "2015" and that it is evident from the contents of the same. The copy of the said letter is also filed duly acknowledge by the complainant on 13/12/2017. From the

contents of the said letter, though is dated as 2015 refers to the application dated 06/11/2017. Thus this Commission holds that the said letter is of 2017 and wrongly typed as 2015.

4) On considering the records it is seen that the application dated 06/11/2017 was responded by the PIO on 01/12/2017. Said letter, as per the endorsement and as per the dates contained on the envelop was posted on 1/12/2017. The same is returned as unclaimed by the complainant on 04/12/2017. A presumption therefore lies in favour of the PIO under section 27 of the General Clauses Act.

5) Even otherwise the said letter was actually received by the complainant on 13/12/2017, but in the first appeal filed on 21/12/2017 which is subsequent to the date of receipt of said letter, there is no mention that such letter was received by her on 13/12/2017. It was necessary on the part of the complainant to approach FAA with clean hands and without suppressing the facts. In the present case the PIO has shown his bonafide vide his letter dated 01/12/2017 of furnishing information on payment of the fees. In this situation Commission do not find any intention on the part of PIO to delay the information or to withhold it. Had the complainant paid the fees as called for, she would have received the same within the stipulated time under the act.

6) Hon'ble High Court of Bombay, Goa bench at Panaji, in ***Writ petition No. 205/2007, Shri A. A. Parulekar V/s Goa State Information Commission and others***, while dealing with the nature of penalty under the act has observed:

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“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.”

7) Considering the above situation I find no substance in the present complaint nor any grounds to impose any penalty under section 20(1) and/or 20(2) of the act. Consequently the notice dated 04/05/2018 issued by the Commission is required to be withdrawn.

8) In the result the complaint stands dismissed. The notice dated 04/05/2018 issued by this Commission is withdrawn.

Order to be communicated. Proceeding closed.

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