

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

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

Complaint No.13/SCIC/2017

Shri Vishal V. Bandekar,
CA-1/11, Sapana Gardens,
Porvorim Bardez,
Goa – 403521.

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Complainant

V/s

Mr Chetan Shirodkar,
Public Information Officer and Secretary,
Village Panchayat of Soccorro,
Bardez-Goa.

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Respondent.

Filed on:23/05/2017

Decided on: 05/11/2018

O R D E R

- 1) The facts as pleaded by the complainant, in brief are that the complainant by application, dated 11th August 2015 sought from the respondent PIO the documents enclosed by Syndicate Bank pertaining to house No.804/3C(11) i.e. CA-1/11 Sapna Gardern and by Amit Muzamdar pertaining to house No.804/3(7) i.e. CA-1/7 Sapna Gardens, as listed at points (a) to (g) of the said application.

The said application was replied by PIO on 01/10/2015 informing the complainant that said information as not available.

Being aggrieved, the complainant filed first appeal, which was disposed on 14/12/2015, directing PIO to make a search and furnish the same within 10 days. In spite of the said order the information was not furnished. The complainant has therefore approached this Commission with this complaint u/s 18 of The Right to Information Act 2005 (Act).

2) On notifying the PIO to show cause, PIO Shri Chetan Shirodkar filed his reply to the complaint. In his said reply it is the contention of PIO that considering his reply before First Appellate Authority (FAA) it was held that the records might not be available and hence direction was issued to search the records. It is further contended by PIO that the information sought is old and all possible efforts were made but are not traceable. It is also contended that the Panchayat office was shifted twice and in the process of shifting records might have been misplaced.

The PIO has also raised the point of delay of about 2 years caused in filing the complaint and contends that it is only to harass the PIO that this complaint is filed.

3) Subsequently by a memo dated 04/01/2018 the PIO contended that he was informed that some files were seized for the purpose of investigation and has placed on record the letter dated 27/11/1999 from SDPO calling for some details in connection with P.S. Cr. No.125/98 as also the copy file register maintained by respondent office on 23/02/2018. The PIO has also filed on record the seizure panchanama dated 30/11/1999, showing the files seized.

4) As the information was not furnished due to non availability of the records, the PIO was directed to prove the said fact on an affidavit which was filed by him affirming the contents of earlier reply in verbatim.

5) The complainant filed an affidavit in counter wherein he has raised some Civil issues pertaining to his house tax and has submitted that in the absence of documents his ownership rights and legality of the housing complex are jeopardized. He has also raised the issue of non obeying of the order of FAA by PIO. He has also submitted that the enclosures to the memo

submitted by PIO has no relevancy. He has also contended that the PIO has deliberately withheld the information.

- 6) Being a complaint, the short point to be decided is whether the non furnishing of the information is intentional and deliberate to attract the penalty u/s 20(1) and/or 20(2) of the Act.
- 7) In the present case the information sought was indisputedly pertaining to the year 1999. The same was sought in the year 2015. Besides this fact it is also the case of PIO that the office of Panchayat was shifted twice. Thus considering the above facts it is quiet probable that the records are misplaced. The above facts are also affirmed by the PIO on affidavit. Though in the counter affidavit the complainant has raised several issues pertaining to his Civil rights in respect of transfer of house tax ,the same are beyond the competence of this Commission and has no relevancy for the present complaint.
- 8) On perusal of the records and as contended by PIO, the order of FAA was passed on 14/12/2015 and the complainant was deligent till March 2016 to seek the enforcement of said order. The complainant has not filed any appeal seeking information and this complaint is filed after a delay of over one year. The delay is not explained.
- 9) *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."

- 10) Considering the above ratio laid down by the Hon'ble High Court of Bombay and in the back ground of the facts and circumstances as above, I find that the non furnishing of information cannot be held to be intentional or deliberate.
- 11) In the above circumstances I find no grounds to invoke my rights u/s 20(1) and /or 20(2) of the Act. Consequently the show cause notice, dated 15/11/2017 stands withdrawn. Proceedings closed.

Pronounced in open hearing.

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