

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

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

Complaint No.100/SCIC/2010

Shri Kashinath Shetye,
Bambin Bldg., Alto Fondvem,
Ribandar, Tiswadi –Goa. Complainant

V/s

- 1) The Government of Goa,
Represented by the Chief Secretary to Government,
(Information and Publicity Department),
Govt. of Goa.
- 2) The Director & Ex-Officio Joint
Secretary of Goa (Information & Publicity),
Department of Goa. Respondents

Date: 18/12/2018

O R D E R

- 1) The complainant herein by present complaint has raised a concern to the non compliance of order, dated 23/08/2006 and 30/03/2007, passed by this Commission. Said orders were passed in complaint No.1/2006/Inf/A filed by one Amar B. Naik against the respondents herein.
- 2) By pointing out and elaborating the said orders and by pointing out the provisions of The Right to Information Act 2005 (Act for short) the complainant has prayed for monitoring the directions of the Commission by Chief Secretary, as also for Penalty against the PIO for not complying with section 4(1)(a) & 4(1) (b), compensation as also other directions regarding procedure adopted by the authorities in appointing authorities under the act.
- 3) The Respondent No.2 filed reply on 03/09/2010. Vide said reply the respondent No.2 has narrated the steps taken by

...2/-

it to collect the information from the various authorities. The said reply also reproduces the contents of the said interim order dated 23/08/2006 and the final order dated 30/03/2007 passed by the Commission. It is also the contention of the respondent No.2 that there is no provision in the act contemplating the penalty in the nature of disciplinary proceedings against the authority. According to it the commission is empowered to penalize only PIO and not against the authority.

The Respondent No.2 has also relied upon the reply filed by it in complaint No.24/2009 filed by one R. G. Furtado in which the compliance of the order of Commission is set out.

- 4) Perused the records and considered the controversy involved in the matter. It is the contention of complainant in the complaint that he is aggrieved by the non compliance of the said orders, dated 23/08/2006 and 30/03/2007 passed by this Commission.

On considering the said order, it is seen that by the first order dated 23/08/2006, the Commission has observed that the respondent No.2 has not complied with its earlier directions and that several mistakes are committed by it while compiling the information. By same order certain further directions are given to respondent No.2 which are contained at para 16(1) to (7) of the said order, dated 23/08/2006.

By second order, dated 30/03/2007, the Commission has made several observation which are contained at para

13(a) to (i) therein and by same order the Commission has recommended disciplinary proceedings to be initiated against the respondent No.2. The operative part thereof reads:

“14 The Respondent NO.2 being the Ex-officio Joint Secretary to the Government as well as the Head of the Department was not expected to commit such a grave errors in compiling the information in careless manner. The Commission, therefore, has no hesitation to recommend that the disciplinary proceedings be initiated against the Respondent No.2 for the reasons set out by the Commission in this order.”

- 5) Though the respondent No.2 has raised the legality and propriety of the said order in its reply the same cannot be considered by the Commission now and can be challenged only in a writ petition. Though it is said by respondent No.2 that the same is challenged in writ Petition No.924 of 2010, no order or any records are filed on record and hence no cognizance of such statement can be taken.
- 6) If one reads the said orders dated 23/08/2006 and 30/03/2007 vis a vis the grievance of the complainant herein, it appears that the complainant requires the enforcement of the said order recommending disciplinary action.
- 7) On considering of the provisions of the act, the said order dated 30/03/2007 is apparently passed pursuant to the powers granted to Commission under section 20(2) of the act said section 20(2) reads

"20. Penalties:-

1).....

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

From the above reading it is clear that the Commission can only recommend disciplinary proceedings against PIO under the service rules applicable to him. It is further clear that the procedure to be adopted in such disciplinary proceedings is as one prescribed under such service rules applicable to the PIO. Consequently the authorities to conduct such proceedings are those as are prescribed under service rules. Any challenge to such disciplinary proceedings shall also be governed by such service rules.

...5/-

The Act does not confer jurisdiction to the Commission to oversee the proceedings or to sit in appeal against the orders in disciplinary proceedings. Hence any grievance in respect of disciplinary proceedings are required to be dealt with by the authorities constituted under such service rules. The Commission is only a recommendatory body.

- 8) In the light of the above observations. The complaint is disposed. However this order shall not effect the right of the complainant to seek enforcement of the orders dated 23/08/2006 and 30/03/2007 or to challenge the orders that may be passed in the disciplinary proceedings, before other appropriate forum as may be prescribed under the service rules governing the respondent no.2 or any other law in force.

Order to be communicated to parties.

Proceeding closed.

Sd/-

(P. S. P. Tendolkar)

State Chief Information Commissioner
Goa State Information Commission
Panaji - Goa