



documents but according to complainant the information sought was not in the form of file records and that the PIO is deliberately refusing to provide the information. The complainant has therefore landed before this commission by way of complaint u/s 18 of the act.

4. By the notice, dated 16/1/2018, the PIO was directed to show cause as to why action u/s 20(1) and/or 20(2) of the act should not be initiated against him.

5. PIO, Shri Nilesh Shirodkar on 9/3/2018 filed reply to the notice. According to him the complaint is devoid of merits as the information is already furnished. According to him the main controversy has arisen in respect of points nos.11 and 12 towards which he has given reply. According to him once the plans are approved by TCP, Panchayat has no role to play as panchayat has no technical persons and the technical evaluation of the TCP is only considered.

According to PIO the information sought at point (12) is a point of law and hence does not come under the purview of the act. That panchayat is not advisory on point of law and the information in the form of records only can be provided. According to him the PIO at the relevant time was one Roquizina Fernandes and that she is presently posted at V.P. Chinchini and that the present PIO has taken over the charge on 11//9/2017.

Ms. Roquizina Fernandes, who according to present PIO was acting as PIO at the relevant time, also remained present on 9/3/2018 and submitted that she is adopting the reply filed by the present PIO, Shri Shirodkar.

7. In the light of the ratio laid down by the Supreme court in the case of **Chief Information Commissioner and**

***another v/s State of Manipur and another (civil Appeal No. 10787-10788 of 2011)*** holding that “*proceedings being a complaint u/s 18 of the act the only relief which could be considered are the relief of penalty*”, the issue to be considered herein would be only the issue of penalty.

**8.** Notice was issued to the complainant. The complainant chose to remain absent. Being a complaint involving only the relief of penalty, the presence of the complainant was not insisted upon in the light of the ratio laid down by the High Court of Delhi in the case of ***Ankur Mutreja V/S Delhi University*** LPA.764/2011 holding that “*in the cases involving penalty proceedings the act does not provide for CIC to hear the complainant or appellant.*”

**8.** I have considered the records and the pleading of the parties. The complainant sought information by his application dated 11/8/2017. The same was responded on 7/9/2017. Thus the PIO has complied with the requirements of time u/s 7(1).

**9.** Vide said reply the PIO has enclosed the documents in respect of the points nos.1 to 10.The information at point 11 was in the form of an opinion as to the procedure adopted by Panchayat. However the same was replied by PIO. In respect of point 12 the PIO has informed that the same is not available in records. Even otherwise the information at said point is in the form of opinion and hence cannot form information as defined under the act.

**10.** While considering the extent and scope of information that could be dispensed under the act, the Hon’ble Supreme court in the case of: ***Central Board of Secondary Education &***

**another V/s Aditya Bandopadhyay** (Civil Appeal no.6454 of 2011) at para 35 has observed :

*“35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of ‘information’ and ‘right to information’ under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”*

**11.** Considering the above scope I find that the PIO has replied the application u/s 6(1) of the act and has furnished the copies of the records as its enclosures. The Complainant has not specified as to which of the information is false or not

borne out of records. I therefore find no intention on the part of PIO to suppress the information.

**12.** 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."*

**13.** In the light of the above ratio even if the reply furnished by the PIO is held as non satisfactory that by itself would not lead the commission to invoke the powers under the act for imposing penalty. In the present case I find no intentional or deliberate suppression of information. I therefore find no grounds to invoke the rights u/s 20(1) and/or 20(2) of the act.

**14.** Considering the above, the show cause notice, dated 16/1/2018 is required to be withdrawn which is withdrawn accordingly. Proceedings closed.

Notify the parties.

Pronounced in the open proceedings.

Sd/-

**(Mr. Prashant S. P. Tendolkar)**

State Chief Information commissioner

Goa State Information Commission

Panaji-Goa