

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

CORAM: Shri Juino De Souza : State Information Commissioner

Complaint No. 03/2019/SIC-II

Shri Savio Fernandes,
H. No. 496, Penha de Franca,
Near Tourist Cottages,
Bardez Goa. 403101.

.... Complainant

v/s

1. Public Information Officer,
Office of Goa State Infrastructure
Development Corporation,
EDC House, Panaji – Goa 403001.
2. First Appellate Authority,
Office of Goa State Infrastructure
Development Corporation,
EDC House, Panaji – Goa. 403001

.... Respondents

Relevant emerging dates:

Date of Hearing : 03-04-2019

Date of Decision : 03-04-2019

O R D E R

1. **Brief facts of the case** are that the Complainant vide an RTI application dated 3rd October, 2018 sought certified copies of various documents from the files pertaining to the construction of the new bridge across river Mandovi. The information sought is voluminous at 36 points and as contained in the RTI application therein.
2. It is seen that a letter dated 11th October, 2018 was issued by the PIO requesting the Complainant to attend the Office of the Public Authority for clarifying certain issues as some discrepancies were observed during collecting of the documents and accordingly it is seen that the Complainant had visited the Office on 16th October, 2018 and after sorting out the issues also clarified vide his letter dated 16th October 2019 regarding the correct information which is sought.
3. It is further seen that the PIO vide a letter dated 29/10/2018 informed the complainant to pay an amount of Rs.2,906/- by cash or Demand Draft or Bankers cheque....

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.... drawn in favour of "Public Information Officer, GSIDC Limited" payable at Panaji towards cost of 1423 pages of information documents and after which the information will be furnished within 3 days upon remitting of the said amount. The Complainant accordingly has paid Rs.2,906/- by cash vide Receipt No.2108 dated 31/10/2018.

4. It is the case of the Complainant that although he has paid the amount on 31st October 2018, the PIO has not bothered to provide information within the stipulated period of 30 days as per Sec. 7(1) of the RTI Act, 2005 and therefore he addressed a letter dated 30/11/2018 to the PIO by enclosing copy of the receipt for the payment of Rs.2906/- stating that he is entitled to receive the information free of cost as per section 7(3) and 7(6) and requested refund of the money deposited.
5. The PIO by letter dated 04/12/2018 replied stating he was not informed by the Complainant of the payment made in the accounts section and therefore photocopying was not done and documents were not made available, however after receiving the letter dated 30/11/2018, the photocopying is undertaken and documents kept ready and as such there is no question of refunding the amount paid.
6. The Complainant dashed out another letter dated 07/12/2018 to the PIO, stating that the contents of the letter dated 04/12/2018 are contrary to section 7(3) & 7(6) of the RTI act 2005 and once again humbly requested for refund of the money paid and issue certified copies of information documents free of cost failing which he the Complainant will collect the copies under protest and take further steps as per the provisions of the RTI act before the commission.
7. The PIO by another letter also dated 07/12/2018 regretted that he is unable to consider the request of the Complainant to refund the amount paid and to once again collect the information copies that are kept ready for issue. It is seen that the Complainant has collected the documents from the PIO on 12/12/2018.

8. The Complainant being aggrieved that the PIO has not considered his request for refund, thereafter has filed a first appeal on 13/12/2018 and the First appellate Authority (FAA) vide an order dated 09/01/2019 dismissed the first appeal and being further aggrieved the Complainant has come in a Complaint case before this Commission registered on 14/01/2019 and has prayed to direct the PIO to refund the money so deposited and for disciplinary action and for imposing penalty and other such reliefs.
9. **HEARING:** The matter is taken for final disposal. During the hearing the Complainant is present in person. The PIO, Shri PVK Nair, Chief General Manager is present along with APIO Shri Laxman Amonkar. The FAA is represented by Ms Amrita Sardesai, Asstt Manager (Legal)
10. **SUBMISSIONS:** The Complainant *inter alia* submits that the PIO has deliberately and malafidely failed to read sec 7(1) and 7(3) of the RTI act and has failed to discharge his duties and tried to put the blame on him. It is also submitted that he had deposited the amount of Rs.2906/- vide receipt no 2018 on 31st October 2018 as per the letter 29/10/2018 and the PIO was bound to furnish information immediately without excuses. It is also submitted that his humble request of refund was not considered and as such he had no option but to collect the information under protest and that he is entitled to receive the information free of cost as per section 7(3) and 7(6) and makes a demand for refund of the money deposited and also presses for penalty and disciplinary action against the PIO.
11. Per contra the PIO argues that the Complainant did not inform PIO or APIO after making the payment in the Accounts Section and being unaware the information was not furnished within 30 days from the date of payment. It is also submitted that there is no provision in the RTI Act, 2005 to refund the amount paid by the Applicant.

12. The PIO also argues that the Complainant after receiving the said letter dated 7th December, 2018, visited the Office on 12th December, 2018 and has collected certified copies but not under protest. It is also argued that since the Complainant had filed a first appeal which was dismissed, therefore a Second Appeal ought to have been filed against the decision/order of the First Appellate Authority and not a Complaint case.
13. **FINDINGS:** The Commission has heard the respective parties and also perused the material on record including the Complaint memo, the written submissions/arguments of the PIO dated 08/04/2019 and the Order of the FAA and at the outset finds that this is a Complaint case filed under section 18 and the reason for the Complainant in approaching the Commission is for refund of the amount of Rs.2906/- deposited vide receipt no 2018 on 31st October 2018 as the PIO has not furnished information immediately within three days as was informed to him vide letter dated 29/10/2018 and as per section 7(1).
14. No doubt there are no explicit provisions for granting refund of additional fees paid for collecting information as per the RTI act, however, the Complainant has raised serious allegations against the PIO of deliberately and malafidely failing to discharge his duties of furnishing the information within the mandated time period after depositing the amount of Rs.2906/- on 31st October 2018, although the PIO has denied the same.
15. In a Complaint case the Commission has the power to initiate an inquiry and can impose penalty as per Section 20 of the Act, 2005 and while inquiring into a complaint under Section 18, the commission has the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Judgment of the Supreme Court in the case Chief Information Commr. and Another State of Manipur supra ..para 29)

16. When conducting an inquiry the Commission will have to follow the procedure under the Indian Evidence Act of summoning and enforcing the attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things; requiring the discovery and inspection of documents; receiving evidence on affidavit; requisitioning any public record, issuing summons for examination of witnesses, etc.
17. The Commission finds that conducting an enquiry to ascertain whether it is the fault / mistake of the Complainant or of the PIO that has caused delay in furnishing information would be a long drawn time consuming affair, involving unnecessary expenditure, besides not serving any useful purpose and will be an exercise in futility more so as the dispute regarding the amount of refund involved is paltry.
18. It is a fact that the Complainant has paid the amount on 31/10/2018 as per intimation of the PIO who vide letter dated 29/10/2018 had asked the Complainant herein to pay the amount of Rs.2,906/- by cash or Demand Draft or Bankers cheque drawn in favour of "Public Information Officer, GSIDC Limited" payable at Panaji and that the information will be furnished within 3 days upon remitting the said amount. Therefore when the Complainant has paid the money, it is his right to receive the information as per section 7(1) within the mandated time period of 30 days, if not the three days, after effecting additional payment as per provisions of the RTI act 2005.
19. The excuse and shelter taken by the PIO that that the Complainant deposited the amount in the accounts section and did not inform the PIO after making the payment and thus being unaware could not furnish information within 30 days after payment is not acceptable. It was the bounden duty of the PIO to have instructed the concerned cash clerk of the accounts section to bring to the notice of the PIO if the payment is received. There has to be coordination and communication between the office of accounts section and the PIO.

20. The Commission also finds that the PIO in the letter dated 29/10/2018 has not issued specific and clear instructions that the Complainant should inform the PIO after making payment and to produce the receipt and obtain the information and this has caused confusion or doubt and for which the Complainant cannot be blamed. As the information has been furnished after 30 days of effecting of payment, it is the right of the Complainant to receive the information free of cost as per section 7(6) of the RTI act 2005.
21. The Complainant has prayed for total refund, but such a request cannot be considered as the information supplied of 1423 pages involves costs, however as a delay of about 40 days has occurred in furnishing information after effecting of payment, the Commission orders a partial refund of Rs.1900/- to be paid to the Complainant out of the amount of Rs. 2906/- which the Complainant has already paid.
22. The PIO is directed to instruct the accounts section of the Public Authority to draw a cheque for amount of Rs 1900/- in the name of Savio Fernandes, the Complainant herein within 15 days of the receipt of this order. The said cheque shall be posted to the Complainant by Speed Post or Registered Post with AD immediately thereafter. A compliance report should be submitted to the Commission by enclosing a Xerox copy of the Cheque.
23. It is made clear that *prima facie* the Commission finds that there is no malafide intention on the part of the PIO to cause any intentional delay in furnishing the information. Consequently, the prayer of the Complainant for penalty and disciplinary action stands rejected

With these directions the Complaint case stand disposed.

All proceedings in Complaint case stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned.

Sd/-
(Juino De Souza)
State Information Commissioner

