

GOA STATE INFORMATION COMMISSION
Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Penalty No. 32/2018/CIC
In
In Appeal No.95/SIC/2014

Shri Gajendranath . R. Usgaonkar
Advocate, Residing at H. No.1350,
Next to Central Bank of India,
Opposite Market, Housing Board ,
Alto Porvorim, Bardez –Goa.

..... Appellant

V/s

- 1) The Public Information Officer
Law Department (Legal Affairs)
Government of Goa
Secretariat, Alto Porvorim
Bardez Goa.
- 2) The First Appellate Authority,
Joint Secretary (Law),
Government of Goa
Secretariat, Alto Porvorim,
Bardez Goa.

..... Respondents

Dated: 10/09/2019

O R D E R

- 1) While deciding the above appeal, this Commission by Order, dated 06/07/2018, directed the PIO, Ms. Pooja Phadte, to show cause as to why penalty as contemplated u/s 20(1) and/or 20(2) of the Right to Information Act 2005 (Act) should not be imposed against her.
- 2) Pursuant to said notice, Ms. Pooja Phadte filed her reply on 21/08/2018. Vide her said reply the PIO has reproduced in verbatim her reply filed in the appeal. The PIO also has relied upon the same case laws viz. Dr. Celsa Pinto V/s Goa State Information Commission (W.P. No. 419/2007) and that of Central Information Commission in the case of

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Shri Vibhor Dileep Barla V/s Central Excise & Customs. The Contentions as raised in the reply filed herein were already considered while passing of the order dated 06/07/2018 in above appeal. The ratio as laid down in the various case law as cited herein is also distinguished in the order passed in the above appeal. Being so, I refrain from reproducing the contents of the said reply dated 21/08/2018 to avoid repetition. If at all the PIO had any grievance against the same, the same were required to be challenged before the appropriate forum.

- 3) The PIO filed her written submission on 06/02/2019. Vide her said submission it is submitted that the information being not in possession of the respondent department could not be furnished. It is also submitted by the PIO that there was no mal intention on the part of PIO not to transfer the request of appellant to other authorities u/s 6(3) of the Act and also that there is no earlier lapse on her part to invoke section 20(2) of the act. It is finally submitted that pursuant to the order of this Commission the request for information of the appellant dated 20/03/2014 is transferred to concerned department.
- 4) On perusal of the records it is seen that the application for information, dated 20/03/2014 was decided on 14/04/2014 by the PIO. Thus there was no delay in deciding the same. However the grounds for refusal of information was that it was not held by it but by other authorities, to whom the appellant was directed to approach. The later part of the said decision of PIO, directing the appellant to approach other authorities was erroneous. The PIO has failed to consider the specific provision made under Act to deal with wherein requests

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information is held by other authorities. To deal with such cases act has clearly provided section 6(3) which requires transfer to such other authorities within 5 days from receipt of transfer. Ignorance of such provision cannot be of any help the PIO, more particularly being law department.

5) The PIO in her reply has taken shelter of certain directions issued by Director of Information and Publicity vide Circular NO. DI/Inf/RTI/Disclosure/08/2152, dated 15th July 2008 based on office memorandum dated 12/06/2008 by Department of Personal & Training (DOPT). It is to be noted that the Right to information Act 2005 is an independent act passed by Parliament. Any circulars or memorandums cannot substitute the provisions of the act nor can override the law. In this backdrop the PIO ought not to have considered the said circular of the Department of information & publicity for dealing with the request. This legal position should not be strange to the respondent department engaged in implementation and providing legal assistance to the state.

6) However considering the said ground as raised by PIO, a lenient view is taken while dealing with the matter. The PIO is hereby directed that hence forth all applications under the act should be dealt with independently without submitting to the circulars or memorandums issued by any office, and strictly as per the provisions of the Act.

With the above observations, the show cause notice, dated 23rd July 2018 issued by this Commission, in the above proceedings stands, withdrawn order be communicated.

Proceedings closed.

Sd/-

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

