

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

CORAM: Shri Juino De Souza: State Information Commissioner

**Penalty No. 16/2014 in
Complaint No.127/SCIC/2013**

Mr. Milagres Coutinho,
H. No. 728,
Fradilem Navelim,
Salcete – Goa.

.... Complainant

v/s

Public Information Officer,
Then Chief Officer,
Margao Municipal Council,
Margao – Goa

.....Opponent

Relevant emerging dates:

Date of Hearing : 18-11-2019

Date of Decision : 18-11-2019

O R D E R

1. **Brief facts of the case** are that the Complainant vide an RTI Application dated 28/03/2013 sought certain information u/s 6(1) of the RTI Act, 2005 from the respondent PIO, Chief Officer, Margao Municipal Council, Margao, Salcete-Goa. It is seen that the information sought is in question form and Complainant is asking what action/steps the Margao Municipal council has taken on the Complaint dated 25th January 2013 till date along with action taken report and other relevant papers pertaining to the complaint.
2. It is further seen that PIO vide reply no. MMC/TECH/G-110/13-14/296 dated 25/04/2013 the Complainant was informed that the information does not come under the purview of the RTI Act.
3. Not satisfied with the reply Complainant filed a first Appeal on 20/05/2013 and First Appellate Authority (FAA) vide order dated 19/06/2013 set aside the reply of the PIO bearing no.MMC/TECH/G-110/13-14/296 dated 25/04/2013 and directed the PIO to hear the Applicant within period of 10 days and furnish the information.

4. Being aggrieved that despite the order of FAA, the PIO has not furnished any information, the Complainant has approached Commission by a way of complaint case dated 23/08/2018 and has prayed that strict disciplinary action be taken and other such reliefs.
5. **HEARING:** Pursuant to the notice issued the Respondent former PIO, Smt. Deepali D. Naik, then Chief Officer of Mormugao Municipal Council presently posted as Director, Directorate of Women & Child Development, Panaji-Goa appears before the Commission and tenders her explanation.
6. **SUBMISSIONS:** She submits that the Complainant had sought information by filing an RTI application dated 28/03/2013 and has sought information in question form by asking " what action/steps the Mormugao Municipal Council had taken on Complaint dated 29/01/2013.
7. It is further submitted that vide reply no.MMC/TECH/G-110/13-14/296 dated 25/04/2013 the Complainant was informed that the information does not come under the purview of the RTI Act. It is further submitted that the information is in question form and the PIO is not called upon to answer questions and that no information was available regarding the Complaint dated 25/01/2013 in which the complainant is seeking information regarding Action taken under RTI.
8. The PIO also submitted that the FAA has passed an order dated 19/06/2013 beyond the mandate of the RTI Act, 2005 by directing to hear the RTI Applicant once again and that there is no question of hearing the complainant again as the PIO cannot be called to answer questions. The former PIO, finally submits that she has submitted the said reply dated 25/04/2013 in good faith and that there are no malafide intentions either to deny or delay the information and requests the Commission to close both the complaint case and the penalty proceeding case.

9. **FINDINGS:** The Commission after hearing the submissions of the former PIO and perusing the material on record, at the outset finds that the said Complaint case being Complaint No.127/SCIC /2013 was not disposed and that penalty notice by an Order on the Roznama dated 26/03/2014 was issued under Section 20(1) and subsequently Penalty Proceeding case file was opened from 16/07/2014 onwards.
10. The Commission further finds that in this complaint case of the year 2013 a cost of Rs. 500/- was imposed for remaining absent and the former PIO has paid the amount of Rs.500/- vide receipt No.29 dated 14/08/2014.
11. The Commission on scrutiny of the RTI application indeed finds that the information is sought by asking questions and which does not constitute as information as per section 2(f) of the RTI act 2005 and rightly so the PIO could not furnish the information and which was intimated to the Complainant vide reply no MMC/TECH/G-110/13-14/296 dated 25/04/2013.
12. Section 2 (f) : "Information" means any material in any form, including Records, Documents, Memos, e-mails, Opinions, Advices, Press releases, Circulars, Orders, Logbooks, Contracts, Reports, Papers, Samples, Models, Data material held in any electronic form and information relating to any private body which can be accessed by a Public Authority under any other law for the time being in force.
- In the Bombay High Court at Goa Judgment in Dr. Celsa Pinto, Ex-Officio Joint ... vs The Goa State Information ... on 3 April, 2008 Equivalent citations: 2008 (110) Bom L R 1238 it was held**
13. The definition cannot include within its fold answers to the question why which would be the same thing as asking the reason for a justification for a particular thing.....

...The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information.

Accordingly the Commission upholds the reply of the PIO bearing no MMC/TECH/G-110/13-14/296 dated 25/04/2013. The Order dated 19/06/2013 of the FAA is hereby quashed and set aside. Consequently, the penalty proceedings are also ordered closed.

With this observations both the Complaint case and penalty case stands closed.

Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

**Sd/-
(Juino De Souza)
State Information Commissioner**