

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

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website: www.gsic.goa.gov.in

Complaint No. 12/2020

Shri Saish Redkar,
H.No. 632, Camurlim Housing Board,
Camurlim, Bardez-Goa. 403517

-----Complainant

v/s

1. Public Information Officer,
The Executive Engineer, Division VI,
Electricity Department,
Mapusa-Goa. 403507

-----Opponents

Shri Vishwas R. Satarkar - State Chief Information Commissioner

Filed on:-07/03/2020

Decided on:-01/09/2021

ORDER

1. The facts in brief of this complaint are, that the Complainant by his application dated 18/10/2019 u/s 6(1) of the Right to Information Act, 2005 (Act for short), sought information from Public Information Officer (PIO), Electricity Department, Calangute Division at Calangute Goa. The said application was transferred under sec 6(3) of the Act to Respondent No. 2, Executive Engineer, Division VI, Electricity Department, Mapusa Goa being the PIO in the matter on 21/11/2019 and on the same day said part of RTI application was forwarded to PIO, Div. XIII of Electricity Department situated at Kadamba Plateau, Old Goa specifying to reply on at point No. 6,7,8 and 10 of the application.
2. On 12/12/2019 the PIO and, Respondent herein called upon the Complainant and furnished the information of 15 pages to the Complainant free of cost and instructed the Complainant to collect the rest of the information from the office of Electricity Department, Div XIII,

Kadamba Plateau, Old Goa as custody of the said information is with Div. XIII of Electricity Department.

3. Not satisfied with the reply and information, Complainant preferred first appeal before the Superintendent Engineer-II North Goa at Panaji being First Appellate Authority (FAA).
4. FAA in its order noted that the information at sr. No. 1, 2,3,4,5 and 9 has been duly furnished to the Complainant by Respondent No. 1 and since application for part information at Sr.No. 6, 7, 8 and 10 has been transferred to Div. XIII of Electricity Department, Kadamba Plateau at Old Goa, directions were issued to furnish the balanced information within a week time i.e by 04/02/2020 to the concerned PIO. However since the Complainant herein did not receive the information he preferred the present complaint u/s 18 of RTI Act, with the prayers to direct the Respondent to provide correct information and action of fine and disciplinary action under service rule be taken against PIO.
5. Pursuant to notice, the Respondent Shri. Pradip Narvekar filed his reply on 26/03/2021 stating that the information pertaining to his office at Sr.No. 1, 2,3,4,5 and 9 has been duly furnished to Complainant free of cost and acknowledgment to that effect was produced.
6. When the matter was posted for argument, Respondent PIO filed one application dated 12/07/2021, stating that part information at Sr.No. 6,7,8 and 10 was furnished to the Complainant by Registered AD dated 31/01/2020 by the concerned PIO, Executive Engineer Div. XIII, Kadamba Plateau, old Goa. However the same was returned as "unclaimed "for incorrect address. The said unclaimed envelope was collected personally by Respondent PIO and brought on record.
7. The said envelope was opened in the presence of both the parties

and it was noticed that letter dated 31/01/2020 contained response of Executive Engineer, Electricity Department, Div. XIII, Kadamba Plateau to information at Sr.No. 6,7,8 and 10 of the application dated 18/10/2019.

8. On perusal of the records and considering the submissions it is indicated that the Complainant has not referred to any proceedings filed by him in the form of second appeal under sec 19(3) of the Act. Present proceeding being a Complaint, this Commission has no jurisdiction to direct the PIO to furnish information.

Hon'ble Supreme Court in **Chief Information Commission and Anr. v/s State of Manipur (C.A.N. 10787-10788 of 2011)**. This ratio has been laid down in para 30 and 31 of the judgment and relevant to the present case-:

"30. It has been contended before us by the respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20.

However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bonafide.

31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while

entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information."

Now the point which remains for determination is whether the PIO has committed any wilful default in furnishing information.

9. Complainant filed application under sec 6(1) of the Act to Asst. Engineer, SD-IV Calangute Goa which was received on 01/11/2019. He furnished the available information to designated PIO on 21/11/2019 therefore he transferred the said application under sec 6(3) to another PIO to furnish the information at point No. 6,7,8 and 10 of the application.

10. Records reveal that, FAA by order dated 29/01/2020 directed the E.E. of Div. XIII to furnish the balanced information within a week.

Records also reveal that Executive Engineer of Div. XIII, sent the information to Complainant by Registered AD on 31/01/2020 which is returned back with the endorsement "Unclaimed".

11. Information in respect of point No. 1,2,3,4,5 and 9 was furnished to the Complainant by letter dated 12/12/2019 which is duly received by Complainant on 18/12/2019. The information was held by Asst. Engineer, Sub-Divisional Engineer at Calangute which was forwarded to the present PIO which in turn was furnished to the Complainant. In the transit, a delay is caused, however the same is marginal. This delay is not a malafide intentional refusal. I, therefore find that there is no deliberate or malafide denial of information by the PIO.

12. Hon'ble High Court of Bomaby, Goa bench at Panaji, while dealing with the case of penalty in **Shri. A.A. Parulekar v/s Goa State Information Commission & Ors. (Writ Petition No. 205/2007)** 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. Further in **Manohar Manikrao Anchule v/s State of Maharashtra (C.A. No. 9095/2012 2013(1) ALL MR 420(SC)**, Hon'ble Supreme Court has held that :

"..... There could be cases where there is reasonable cause shown and the officer is able to demonstrate that there was no persistent default on his part either in receiving the application or furnishing the requested information. In such circumstances the law does not require recommendation for disciplinary proceedings to be made. It is not the legislative mandate that irrespective of the fact and circumstances of a given case, the Commission must recommend disciplinary action merely because the application was not responded within 30 days. Every case has to be examined on it's own facts."

14. In view of the above deliberations, I find that there is no intentional delay of information by the PIO. Consequently I find no grounds to invoke powers under sec 20 of the Act.

This Commission therefore disposes the present complaint with the following order:-

Complaint is dismissed.

Proceedings closed.

Pronounced in open court.

Notify the Parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner

