

GOA STATE INFORMATION COMMISSION

AT PANAJI

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Penalty case No. 55/2010

In

Appeal No.131/SCIC/2010

Damas Oswald Dias

H.No.61217, Xenimol Gotton,
Cuncoim, Salcete –Goa.

...

Appellant

V/s

The Public Information Officer,
Cuncoim Municipal Council,
Cuncoim, Salcete –Goa.

...

Respondent

Appellant absent. His Adv. J.S. Fernandes present.
Respondent alongwith his Adv. C. Mascarenhas.

O R D E R
(13/04/2011)

1. By judgment and order dated 23/11/2010 this Commission issued show cause notice to the Respondent to show cause as to why penalty action should not be taken against him for causing delay in furnishing information.

2. In pursuance of the same the Respondent filed the reply to the show cause notice. It is the case of the Respondent that the Appellant sought trade licence for running Bar/Restaurant in the premises/Shop No.603/A situated at Murida,Cuncoim, Salcete Goa. That since objections were filed by the mother/Brother of the Appellant. The Appellant was directed to submit NOC from Mother/Co-owners/legal heirs of late Leonido Dias, the deceased father of the Appellant. That since the Appellant failed to produce the NOC as required, the defendant vide letter dated 11/02/2010 informed the Appellant that application for issue of trade licence was rejected. That the Appellant vide application dated 16/06/2010 amongst other information, sought certified copy of the purported order 'rejecting' the application. That the Respondent presumably furnished all the information except the order purported to be the said trade licence. That since no information was supplied, the First Appellate Authority (FAA) passed order on 24/03/2010, in the First appeal filed by the Appellant directing the Respondent to furnish the information under letter 'c'. That at this stage the file was referred to the legal counsel of the Respondent Council, who after going through

the entire file/records, found that in fact there was no order rejecting the application of the trade license but the application was filed for the failure of the Appellant to submit the NOCs and that accordingly the respondent was advised to issue corrigendum to the notice dated 11/02/2010 to the effect. That the word 'rejected' was inadvertently used instead of 'filed'.

That accordingly corrigendum notice/order issued on 30/04/2010 informing the Appellant that the word "rejected" was inadvertently used instead of 'filed' which in fact means that no order was passed rejecting the application for licence and the same was merely 'filed' for the want of NOCs. That the delay if any was caused for the above circumstance and there is neither malafide nor deliberate or intentional delay on the part of the Respondent. That the Respondent acted diligently and promptly and the delay was caused due to above misnomer which was on obtaining legal advice. According to the Respondent the showcase notice to be withdrawn and the proceeding be dropped.

3. Heard the arguments. According to the Adv. for the Appellant delay is of 6 months and the same is the matter of record. That the information provided was incomplete and misleading. That the reply is causal and no reasons given. He also referred to the original application given and other material on record. He also referred to the order of the First Appellate Authority. According to him it is negligence of Public Information Officer. According to him maximum penalty be lered.

Advocate for Respondent no. 1 submitted that there is reasonable cause according to him no information was refused nor the same malafidely denied according to him the Commission has to see whether there is any malafide intention. He further submitted that the fact that corrigendum was issued shows that there was no malafide intention. He next submitted that delay can not be attributed to the Public Information Officer and that the PIO has furnished the information to other items as

available. He also submitted that no prejudice was caused to the Appellant and that none of the ingredients of section 20 are present. According to him penalty proceeding ought to be dropped.

In reply, Advocate for the Appellant submitted that corrigendum is back dated. According to him penalty be levied.

4. I have carefully gone through the records of the case and also considered the arguments of the parties.

Admittedly there is delay in furnishing information to the Appellant and that too in respect of only one point i.e. (c) As per order of the First Appellate Authority the information was to be furnished by 23/04/2010. Again information was not furnished. Present appeal was filed on 23/05/2010 and information was furnished by registered A/D on 21/08/2010. I have perused the records. The order which was sought was in fact not in existence. There was some mistake in respect of word 'rejected' and 'filed'. However the only fault was that the same was not informed to the Appellant in time. Right to Information Act, among other things, enjoin upon all concerned to organize their office/functioning in such a way that information as sought could be retrieved with minimum time so as to honour the time limit for providing information as contemplated under the Act. In the instant case the responsibility for the delay cannot be pinpointed on Public Information Officer alone nor does it appear to be wise to blame the PIO for the same. However the public Authority/Municipal Council as a whole should bear the responsibility and the liability of the fine should go to the council and not to the Public Information Officer.

5. Once there is delay then the question is of quantum of penalty. Right to Information Act provides Rs.250/- per day. However, in the instant case I am not inclined to levy full fine. The information regarding to items (a) and (b) was furnished

and only in respect of (c) was not furnished and that too under the peculiar circumstances. Imposition of penalty of Rs. 6000/- would meet the ends of justice in this case. Hence I pass the following order:-

O R D E R

A penalty of Rs. 6000/- (Rupees Six thousand only) is imposed to be paid by the office the Cuncolim Municipal Council Cuncolim from the Funds of Public Authority. This amount be paid in Government Treasury within 45 days from the receipt of this order.

A copy of the order be sent to the Director of Accounts, Panaji-Goa, for the recovery of the penalty as mentioned above.

Penalty proceedings are accordingly disposed off.

Pronounced in the Commission on this 13th day of April, 2011.

Sd/-
(M.S. Keny)
State Chief Information Commissioner

