

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri Motilal S. Keny State Chief Information Commissioner

Penalty Case No. 25/2010
In
Appeal No. 128/SCIC/2010

Mr. Edwin Rodrigues,
Curca-Canturim,
P.O. Goa Velha,
Tiswadi – Goa

..... Complainant/Appellant.

V/s.

Public Information Officer,
Dy. Secretary,
Goa Public Service Commission,
Panaji – Goa

..... Opponent/Respondent.

Complainant alongwith his representative Shri Rui Ferreira.
Opponent alongwith Adv. H. D. Naik.

ORDER
(25.04.2011)

1. By order dated 18/10/2010 this Commission, issued show cause notice to the Respondent No. 1/Public Information Officer as to why penal action should not be taken against him for causing delay in furnishing information.

2. The case of the Respondent/Public information Officer is fully set out in the reply, which is on record. It is the case of the Respondent that there was absolutely no delay in furnishing the information sought. Vide application dated 18/06/2009 the complainant has sought certain information as regard the recruitment of Technical Officer be furnished to him. That the information called for by him at point No. 1 for the list of candidates who were asked to appear for oral interview alongwith the marks obtained in the written and oral interview and at point No. 2 he has called for such candidate recommended to the Government to the above post. It is the case of the Respondent since this information was uploaded on the Commission's Website the Complainant was requested to obtain the same from the Commission's Website and hence the allegation made by the Complainant that the said reply is false, vague and evasive is incorrect. That it appears that the complainant has not

made any attempt to go to the Website of the Commission and see whether the information is available or not. That the information was given to the complainant well within time limit. Vide letter dated 09/07/2009 that the Complainant was asked to refer to the Commission Website as regard to the information at point No. 1 and 2 of the letter dated 18/06/2009. That normally the Commission puts details of marks obtained by candidates in the written examination and also the details of marks obtained in the orals i.e. those of the candidates recommended to the post, on the Commission's Website. A copy of the said result downloaded from the Website is produced. It is also the case of the Respondent that result of the oral interview that is the names of the candidates recommended to the post of technical officer alongwith marks obtained by them were uploaded in the Commission Website. That the details of marks were sent to the NIC to upload soon after the declaration of the results of written examination, i.e. on 24/03/2009 and the same was uploaded on 09/04/2009 and the result of the oral interview was uploaded on 22/05/2009. That at that time Commission Staff was not trained to upload and as such NIC Porvorim was requested to do the said job. In short, according to the Respondent there was no delay whatsoever on the part of the Public Information Officer in providing the information and that the information was very much available on the Commission Website as stated vide letter dated 09/07/2009. According to the Respondent show cause notice is to be discharged.

3. Heard the arguments. Shri Rui Ferreira Representative of the appellant argued on behalf of Appellant and Adv. H. D. Naik argued on behalf of respondent. According to representative of Appellant information must be furnished in the form in which it is sought. He next submitted that Website was false and misleading and that on the day of seeking information there was no information on the Website. The entire thing was to delay and he also submitted that if list was on the Website they could print and give. He also referred to the letter of First Appellate Authority.

During the course of his arguments Adv. for the Respondent submitted that information was furnished within 10 days from the date of order of First Appellate Authority. According, to him information was available on the Website he also submitted that there was no delay. He also referred to the documents produced alongwith the reply. He next submitted that appellant has received the full information and having received he is agitating the issue of penalty. According to him show cause notice is liable to be discharged.

4. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The short point that falls for my consideration is whether there was delay as contended by the Appellant.

It is seen that by letter dated 18/06/2009 the Appellant sought certain information from the Respondent. The information consisted of 4 items that is Sr. No. 1 to 4. By letter dated 09/07/2009 the PIO replied stating that in respect of Sr. No. 1 and 2 to refer Commission's Website. The main contention of the Appellant is that on the relevant day there was no information on the Website. This is disputed by the Respondent. It is now to be seen whether there was such an information on the Website.

5. Reply dated 09.07.2009. It is seen that on this date the information sought was on the Website as can be seen from the records. Commission's letter through E-mail dated 08.04.2009 requesting National Informatics Centre (NIC) to upload the marks of the candidates for the screening test to the Post of Technical Officers – letter from Shri Reddy from NIC dated 08.04.2010 stating that the said result was uploaded on the Website. Email dated 22.05.2009 requesting to upload the Result of Oral Interview is on record. From the material on record it becomes clear that as on 09.07.2009 the said information was available on the Website.

6. I have also perused the Memo of Appeal before First Appellate Authority and particularly the grounds of appeal. The Appellant nowhere states that on the relevant day the information was not available on the Website. The Appellant only states that "the reply to the query No. 1, 2 and 4 is misleading, irrelevant and evasive.....". Again he mentions:- "The reply given at Sr. No. 1, 2 and 4 is false, misleading, and attracts penalties."

Even in the Memo of Appeal before this Commission the Appellant does not specifically state that the said information was not there on the Website. It was only during arguments this issue cropped up. Again, soon after reply dated 09.07.2009 the Appellant has not informed the Public Information Officer that the said information was not on the Website.

In view of the evidence on record and in view of the above it is not possible to accept the contention of the Appellant that the information was not there on the Website.

7. Now it is to be seen whether reply given to see the Website is proper or not?

It is to be noted here that implementation of section 4(1) of the R.T.I. Act is the mandate of law and is to be done by all the Public Authorities concerned. The importance of suo-motu disclosures under section 4(1) (b) can hardly be over emphasized. It is interesting to know that maximization of suo motu disclosures would result in minimization of recourse to the provisions of section 6(1) of the Act and thereby save valuable time, energy and resources of the stakeholders viz. Public authorities and the information seekers.

I have also perused some of the rulings on the point:-

(i) In Dr. Subhash Chand Lall V/s. Institute of Genomics and Integrative Biology (F. No. CIC/AT/A/2008/00904 dated 06.01.2009) it was observed as under:-

"RTI Act enjoins all public Authorities to progressively bring specific information into the public domain by publicizing it through Websites, especially when such information is related to policy formulation and various categories of

guidelines issued from time to time. In this light, the reply of the respondents to appellant that the information requested by him was available in the public domain the Website of CSIR, was wholly in order.”

(ii) In Rakesh Agarwal *v/s.* Department of Posts (Decision No. 3227/IC (A)/2008 F. No. CIC/MA/A/2008/01062 dated 04.09.2008) it was observed that an information which is already in public domain shall not be demanded under the provisions of the R.T.I. Act.

(iii) In Nirmal Solanki *v/s.* Customs Department (F. No. CIC/AT/A/2008/01237 decide on 05.02.2009) it was observed as under:-

“I am not in agreement with the Appellant’s surmise that even if the document is already in public domain, it was open to him to ask the Public Authority to inform him about which sections of the Act that could be applicable to the scenario which the Appellant would paint.”

(iv) In Ashish Kumar Khare *V/s* Fishery Survey of India, Mumbai, (F. No. CIC/AT/A/2006/0036 dated 25.10.2006) it was observed that once the information is in the public domain, it cannot be said to be ‘held’ by the given public Authority, it is not open to the Appellant to ask the public Authority to explain the procedure to him and thus no obligation on Public Information Officer to provide such information.

In view of all the above, Public Information Officer cannot be faulted nor it could be construed as delay on the part of the Public Information Officer. In the Judgment and Order dated 18.10.2010 an opportunity was given to the Appellant to see whether the information was on the Website at the relevant time or not.

8. It was contended on behalf of Appellant that in case the information seeker does not know about Website or if he has not studied, etc. then it would amount to denial of information.

I do agree with this contention. The Public Information Officer to bear the same in mind and see that the information is furnished accordingly in the interests of information seekers who do not know or are unable to avail such facilities.

If this is perused then there is no delay as contended by the Appellant. Considering the application and the reply the same is in time. Even otherwise, since the information was on the Website, the benefit is to be given to the Public Information Officer in so far as delay part is concerned.

9. In view of all the above I am of the opinion that since there is no delay as such then the show cause is to be discharged and penalty proceedings to be dropped. Hence, I pass the following order:-

ORDER

The show cause is discharged. The Penalty proceedings dropped.

The penalty proceedings accordingly disposed off.

Pronounced in the Commission on this 25th day of April, 2011.

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