

GOA STATE INFORMATION COMMISSION AT PANAJI

CORAM: Shri Motilal S. Keny State Chief Information Commissioner

Penalty Case No.67/2010

In

Appeal No. 474/2010

Dr. S. P. Deshpande,
Environmental Planning & Design Consultants,
Bldg. No. 5, Siddharth Apartments, Tonca,
Canranzalem - Goa ... Appellant/Complainant.

V/s.

- 1) Public Information Officer,
Member Secretary,
North Goa Planning & Development Authority,
Archdiocese Bldg., 1st Floor,
Mala, Panaji – Goa ... Respondent/Opponent No.1
- 2) First Appellate Authority,
Shri Aleixo Reginaldo Lourenco,
North Goa Planning & Development Authority,
Archdiocese Bldg., 1st Floor,
Mala Link Road, Panaji – Goa ... Respondent/Opponent No. 2.

Complainant in person.

Adv. H. D. Naik for Opponent.

O R D E R

(21.06.2011)

1. By Order dated 01.12.2010 this Commission issued notice under section 20 (1) of the Right to Information Act, 2005 to the Opponent No. 1/Public Information Officer (PIO) to show cause why penalty action should not be taken against him for causing delay in furnishing information.

2. In reply to the show cause notice the PIO/Opponent No. 1 has filed a reply which is on record. It is the case of Opponent No. 1 that the Complainant had sought information. That the Complainant also filed a Complaint praying for direction to supply information as well as penalty. That the Complainant also prayed that penalty be imposed on the Appellate Authority. It is the case of the Opponent that the said application was not made by the Complainant in his individual capacity but the said application was submitted on the letterhead of E.P.D (Environmental Planning and Design Consultants). That as per section 3 of RTI Act only a citizen has the right to seek information. That although the said application was received by the Opponent No.

1, the Opponent No. 1 thought it appropriate not to reply to the said application as the Complainant has not sought information as a citizen of this country in his individual capacity but by using the letterhead stating that the information has been sought by the Environmental Planning and Design Consultants. That the Appellate Authority vide his Order dated 08.07.2010 directed that the Complainant can inspect the file and collect documents under RTI Act, 2005. That despite the Order of Appellate Authority the Complainant never visited the office of the NGPDA/PIO for inspection of file. That in any event of the matter in the said application the Complainant has in fact raised queries as to why action was taken by the Authority and not any particular information/documents which is clear from the reading of the application. That when the Complainant submitted application dated 08.04.2010, the Authority has not issued any show cause notice to Mr. Amit Monserrate but the show cause notice was issued to him only on 22.04.2010. That the Complainant never bothered to visit the office of the PIO to inspect as per the Order of the First Appellate Authority and obtain necessary information. However, the information was furnished to the Complainant during the pendency of the Complaint. It is the case of the Respondent that in reply to the Complaint specific objection was taken regarding the maintainability of the Complaint. That if the application itself was not maintainable in law then the Opponent was under no obligation to reply or to furnish any such information and, therefore, justified in not having replied to the said application. It is further the case of the Opponent that information has already been submitted to the Complainant and that it appears that the Complainant is deliberately pressing that the penalty be imposed on the Respondent in order to harass this Respondent. That his application itself is not maintainable in law and therefore the show cause notice issued be discharged by this Commission as this Opponent acted bonafidely and in terms of the provisions of law. According to the Opponent the show cause notice issued be discharged.

3. The Complainant has filed an application under title 'Comments on the reply to the show cause notice filed by Opponent No. 1 on January 21, 2011 is on record. In short, it is the case of the Complainant that PIO should have communicated the reasons to the Complainant within thirty days from the date of his application which is required under RTI Act. That the application was signed by the Complainant as an individual who is a citizen of India and that the Opponent has responded on several occasions earlier to his application in similar circumstances. That the show cause was served on Shri Edward Noronha, PoA holder for Mrs. Karen Fernandes who was pursued by NGPDA as the owner of plot No. 5 and thereby perpetrator of encroachment. It is also the case of the Complainant that he has sought distinct information and that he has not asked for inspection of relevant file. According to the Complainant there is a deliberate delay and that penalty is to be imposed.

4. Heard the arguments. Adv. H. D. Naik argued on behalf of Opponent/PIO and Complainant Shri Deshpande argued in person.

According to Advocate of the Opponent, first show cause notice issued is on 22.04.2010 to Amit. That the earlier owner said that he sold the property to Amit Monserrate and that the application is 08.04.2010. He next referred to the Order of First Appellate Authority dated 08.07.2010. Advocate for Opponent submitted that when information was asked Monserrate was not given the show cause notice. According to him there is absolutely no delay in providing the information. He also submitted that after First Appellate Authority directed the Appellant did not collect the information. According to him this is not a fit case to impose penalty and show cause notice be discharged.

5. The Complainant submitted that application was filed on 08.04.2010 and for about three months they did not reply. That the encroachers replied saying that he sold the plot to Monserrate. According to him information was not furnished for about three months and that inspection of file was not asked. He

next submitted that action taken was not informed. According to him there is delay of three months. He also referred to the Order of First Appellate Authority and there was delay in disposing the appeal.

In reply Advocate for Opponent submitted that information is furnished and that there is absolutely no delay and that application itself was not to be considered.

6. I have carefully gone through the records of the case and also considered the arguments advanced.

It is seen that the Appellant/Complainant sought certain information by application dated 08.04.2010. It appears that no reply was furnished. Hence he preferred the Appeal before the First Appellate Authority. By order dated 08.07.2010 F.A.A. directed that Appellant Shri S. P. Deshpande can inspect the file and collect the required documents from the P.I.O. North Goa P.D.A. According to the Appellant till the filing of the Appeal before the Commission no information was furnished. Appeal was filed on 10.07.2010. In short, according to the Appellant there is 60 days delay.

7. The contention of the Opponent is that the said application was not made by the Complainant in his individual capacity but the said Application was submitted on the letterhead of E.P.D. (Environmental Planning and Design Consultants). It was also contended that as per section 3 of R.T.I. Act only citizen have right to seek information and that is why Respondent No. 1 thought it fit not to reply the said application.

This contention is not available to the Respondent at this late stage. Even otherwise merely because it is on the letterhead of E.P.D. the information seeker is a citizen. In any case this ought to have been informed to the Appellant within 30 days from the receipt of the application. The mandate of R.T.I. Act is to furnish information and that too within 30 days. Even if Appellant is not entitled then he should be informed about the same within 30 days. If not, the clock of penalty starts ticking as per the R.T.I. Act.

During arguments Advocate for the Respondent No. 1 produced copy of the order of the F.A.A. which was in fact a reminder to furnish information.

8. Now I shall proceed to consider the question of imposition of penalty upon the Respondent No. 1/P.I.O. under section 20 of the R.T.I. Act. I have come to the conclusion that there is delay in furnishing information. Under R.T.I. delay is inexcusable and delays have dangerous ends. Non-furnishing of the information lands a citizen before F.A.A. and this Commission, thereby resulting into unnecessary harassment of a citizen which is socially abhorring and legally impermissible. The same harms him personally and also inflicts an injury on the society. A feeling of helplessness looms large which is more damaging. Penalty is the only panacea to heal such social wounds. R.T.I. Act provides penalty of Rs.250/- per day. However considering the factual backdrop of this case I feel that imposition of penalty of Rs.10,000/- (Rupees ten thousand only) would meet the ends of justice.

9. In view of the above, I pass the following Order:-

ORDER

The Opponent/P.I.O is hereby directed to pay Rs.10,000/- (Rupees ten thousand only) as penalty, imposed on him today. This amount of penalty should be recovered from the salary of Opponent/P.I.O. in three instalments for the month of August, September and October, 2011 and credited to Government Treasury.

A copy of the Order be sent to the Director of Accounts, Panaji-Goa for information.

The penalty proceedings are accordingly disposed off.

Pronounced in the Commission on this 21st day of June, 2011.

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

