

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri Motilal S. Keny State Chief Information Commissioner

Penalty Case No.35/2011

In

Complaint No. 86/2010

Shri Cedric Lobo,
1-C, Shivkrupa Building,
Opp. Don Bosco High School,
Panaji - Goa

... Appellant/Complainant.

V/s.

Public Information Officer,
Secretary,
Village Panchayat Calangute,
Calangute – Goa

... Respondent/Opponent No.1

Appellant/Complainant in person.

Respondent/Opponent alongwith Adv. Shri. R.N.Zurali.

O R D E R

(07.09.2011)

1. By Order dated 25.04.2011 notice under section 20 (1) of the Right to Information Act, 2005 was issued to the Respondent/Public Information Officer (PIO) to show cause why penal action should not be taken against him for causing delay in furnishing information.

2. The Respondent has filed the reply which is on record. In short, it is the case of Respondent that the Appellant requested information by presenting application on 11.02.2010. That from the requested point No. 1 it was evident that he did not seek information under RTI but opinion of PIO. That since he was seeking opinion, no information could be provided to him. That all other points are correlated to opinions at point No. 1. That RTI Act does not provide for opinion. That the Respondent made efforts to help him to get desired information, if available in the records of the Panchayat keeping in view mandate of the RTI Act. That the Respondent made efforts to contact applicant on his mobile for clarification, however, has to attend to outdoor duties as and when demanded by his superiors and it is also part of his function. That the applicant never contacted him in his office nor waited for him when he was on outdoor duties. It is

the case of the Respondent that he had to conduct the site inspection as per the Order of the Honorable High Court with the Surveyor specifically appointed for implementation of the High Court Order. That the applicant did not contact him within time limit for clarification in the matter of information. That the Respondent did not refuse his application and he was intending to provide him information after getting clarifications from him. It is further the case of the Respondent that meanwhile he was on election duty from the second week of February 2010 till first week of March 2010 which is additional duties in addition to his Village Panchayat Secretary's duty. That he has requested his substitute PIO to ensure to obtain clarification from applicant if he contacts office. That his substitute PIO even made letter to the applicant seeking clarifications. That the applicant filed Appeal before First Appellate Authority (FAA) and that he could not attend the hearing as he was on election duty till first week of March, 2011. That he was also not informed subsequent hearing date of First Appeal. That again he was posted on BLO duty in the second week of March onwards which is in addition to his regular duty as V.P. Secretary and it was time bound outdoor duty and any lapse in this duty is treated very seriously including the penalty of arrest by superiors. That despite his best efforts to provide information it was not possible to provide information. That he provided him information about non-existent of records. That delay was not intentional but on the contrary he made his best efforts to contact him on phone to provide clarification so that application may be in line with provisions of RTI Act and not have opinion which is inadmissible. According to him the proceedings initiated are to be dropped. The Respondent also contends to be more careful, diligent and prompt in dealing with RTI matters in future.

3. Written submissions of the Respondent dated 01.06.2011 and 15.06.2011 are on record.

4. Heard the arguments. Appellant argued in person and Adv. Shri R. N. Zurali argued on behalf of Opponent. Both sides

advanced elaborate arguments. Appellant submitted that application is dated 11.01.2010 and that information not given within 30 days. According to him on 18.02.2011 he sent reminder. He also filed Appeal before FAA. The order was passed by FAA on 15.03.2011. Advocate for Appellant mentioned in detail the sequence of events. According to him there is delay and maximum penalty of Rs. 25,000/- be given.

Advocate for Respondent also advanced elaborate arguments. He also referred to the application about clarification sought, etc. According to him on 04.05.2010 he has given clarification. According to him since clarification was not given, information could not be furnished. He also submitted that information was posted on 27.03.2010. Advocate for Respondent also referred to the reasons for delay. According to him the Respondent was busy as, besides his own work, lot of additional work was given to him and there was no other person to help him in the office in connection with RTI matter. He has also narrated in detail the work schedule of the Respondent.

In reply the Appellant submitted that if clarification was not given how the Respondent furnished the information. He also submitted that there was no reply to his reminder dated 18.02.2010. Appellant also relied on some photographs and letters. According to him reply is vague and misleading and that Respondent is contradicting himself in RTI replies. According to him penalty be levied.

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

It is seen that the Appellant sought certain information vide letter dated 09.01.2010 and the same was received in the office of Respondent on 11.01.2010. By letter dated 18.02.2010 reminder was sent and by order dated 15.03.2010 the First Appellate Authority directed the Respondent to furnish information. The information is furnished by letter dated 23.03.2010 but posted on 27.03.2011. Admittedly there is delay.

Now I shall briefly refer to the Respondent's contention that he had been assigned to various duties. As per letter No. DyC/Demo-squad/GH-Court/66/2009 he was with demolition squad from 7th January to 14th January 2010. This is as per Annexure I of the Respondent. As per letter No. 3/28/Z.P./ELN/2010/12 dated 10.02.2010 Dy. Collector, he was posted under Dy. Collector, Mapusa from 12.02.2010 to 03.03.2010. This is from Annexure B and B.1. It is mentioned that Shri S. Prabhu stands relieved from 03.03.2010 (A.N.) to join Village Panchayat Calangute and for BLO duty from 22.03.2010 to 12.04.2010.

Now the Application is received on 11.01.2010. The P.I.O./Respondent was in the Demolition Squad duty from 7th January to 14th January, 2010 and his next assignment started from 12.02.2010 to 03.03.2010 which shows that he had sufficient time to furnish information. Again letter dated 02.03.2010 and 23.03.2010 are while he was on additional duty/assignment. Therefore this cannot be considered as a reasonable cause for delay. Even assuming for a while he was busy, one must not overlook the fact that information sought was not voluminous. Notice of First Appellate Authority was in fact a reminder to the Respondent/P.I.O. to furnish the information but he did not heed to the same.

6. Now I shall proceed to consider the question of imposition of penalty upon the Respondent/P.I.O. under section 20 of the RTI Act. I have come to the conclusion that there is delay of about 43/44 days in furnishing information. I have also considered the explanation given by the Respondent/P.I.O. However under RTI Act delay is inexcusable. Public Authorities must introspect that non-furnishing of information lands a citizen before F.A.A. and this Commission resulting into unnecessary harassment of a common man which is abhorred by society and not permissible under the law. Sometimes injury to society is grievous. Therefore, some sort of penalty helps in healing such social wounds. RTI Act provides Rs. 250/- per day. However, considering the factual backdrop of this case I feel that

imposition of penalty of Rs.10,500/- (Rupees ten thousand five hundred only) would meet the ends of justice.

7. Another aspect was about information being incomplete, incorrect, false, etc. Appellant vehemently contends that incomplete and false information has been furnished.

I have seen the application seeking information. What is mentioned is Survey number. No name of the person is mentioned. Under section 6(1) an information seeker must specify the particulars of information being sought. From the records filed it appears that Appellant was aware of the name of the person. Letter dated 15.09.2010 produced by Appellant shows the name of Lavu Anant Goltekar. By application under RTI Act dated 13.05.2010 the Appellant has sought house tax details of Lavu Anand Goltekar. I have also perused the letter dated 14.01.2011 wherein unauthorized structures of Lavu Anand Goltekar have been mentioned. I have also perused Report of Illegal Construction under sub-section (5) of section 66 of Goa Panchayat Raj Act, 1994 dated 11.01.2010 from B.D.O., Notice dated 24.12.2010 of B.D.O., Panchanama dated 03.01.2011, Report of Talathi dated 15.10.2010, Show cause notice dated 10.02.2011 and Site Inspection Report dated 27.01.2011 and Panchanama dated 27.01.2011 written by S.N. Prabhu. All these are subsequent to the RTI Application dated 09.01.2010/11.01.2010 and, therefore, it would be too much to presume that P.I.O. knew about this. As pointed by Panchayat Secretaries in various matters before the Commission that records are not maintained as per Survey records. In any case the Appellant should have specified the particulars such as name and address of the person who constructed. I have seen the letter dated 02.03.2010 addressed to the Appellant asking for particulars, however, the same was not furnished. If information was primary concern this details ought to have been furnished. Under these circumstances it cannot be said that incomplete, incorrect and false information was furnished. However, P.I.O. should have written this letter within 30 days from the receipt of the application for seeking information.

8. Normally P.I.O. should furnish correct information as available in the material form with the Public Authority. Again time schedule should be strictly adhered to. Hope in future the P.I.O. would not repeat the same.

In view of all the above and particularly the dates mentioned above, benefit is to be given to the P.I.O. in so far as inquiry is concerned. I also do not feel it necessary to initiate disciplinary proceedings in the factual matrix of this case.

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

ORDER

The Respondent/P.I.O is hereby directed to pay Rs.10,500/- (Rupees ten thousand five hundred only) as penalty imposed on him today. This amount of penalty should be recovered from the salary of P.I.O./Respondent in three instalments for the month of October, November and December, 2011. The Office of Block Development Officer, Bardez to execute the order and recover the penalty from the Respondent/P.I.O. The said amount be paid in Government Treasury. In case Respondent desires to pay the said amount in one instalment he is free to do so.

A copy of the Order be sent to the Director of Panchayat, Directorate of Panchayat, Government of Goa, Panaji and to the Director of Accounts, Directorate of Accounts for information.

The inquiry under section 18(1) (e) also stands disposed.

The penalty proceedings and the inquiry are accordingly disposed off.

Pronounced in the Commission on this 07th day of September, 2011.

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

