

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 177/SCIC/2010

Mr. Lionel F. Pereira,
Bldg. C.2-S-5,
Munj Vihar Coop Housing Society,
Gogol, Margao,
Goa – 403 601

.... Appellant

V/s.

1) Ms. Sandhya A. Shirodkar,
V. P. Secretary,
Public Information Officer,
Betalbatim, Salcete,
Goa – 403 713

... Respondent No.1.

2) First Appellate Authority,
Block Development Officer,
Salcete – II,
Margao – Goa

... Respondent No. 2.

Appellant absent.

Respondent No.1 in person.

J U D G M E N T
(27.07.2012)

1. The Appellant, Shri Lionel F. Pereira, has filed the present Appeal praying that the order dated 18.05.2010 referred to herein be prescribed as being repugnant in context of proceedings and consequently stands as null, void, and malafide, even perverse and malevolent; to impose a maximum fine/penalty as prescribed under Chapter V No. 20, by way of punitive and exemplary fines/penalties and to recommend disciplinary action for proven failures by the respondents to exercise quasi-judicial functions.

2. The brief facts leading to the present Appeal are as under:-

That the appellant sought certified copies of all letters vide letter dated 15.03.2010 (appears to be 15.02.2010) registered at Village Panchayat office same date. That the P.I.O. failed 'prima facie' to provide any information whatsoever within the statutory period/time limit of 30 days from the date of application i.e. 15.03.2010. That a further letter dated 24.03.2010 with true copy of 15.03.2010 letter as enclosure delivered to P.I.O., registered at office 25.03.2010. Having failed to meet a statutory time limit of 30 days, the

P.I.O. with malice and deceit, afterthought, deliberately backdated her letter to Appellant to 15.03.2010. That one documentary evidence clearly identifies that the P.I.O. could not have written her letter 15.03.2010 as the same was posted on 24.03.2010 and received on 25.03.2010. A case of implied deception and fraud by the P.I.O. prima facie exists. That the First Appellate Authority/B.D.O. could not and should not have proceeded with appeal hearings, notwithstanding the many legal flaws in his deliberations. That he had sought to covertly absolve the P.I.O. and to shift blame to the Appellant instead. That the Order dated 18.05.2010 of the First Appellate Authority is distinctly flawed, even perverse. It further violates the Act of 2005 by clearly implying it was justifiable for the V.P. Secretary/P.I.O. to back date her letter. That it plainly sets a dangerous precedent for abuse and violations of the Act by P.I.Os and Appellate Authorities. Being aggrieved the Appellant has filed the present Appeal.

3. The Respondents resist the Appeal and the reply of the Respondent No.1 on record. It is the case of the Respondent No. 1 that all the letters related to this case were delivered to the Block Development Officer, South for action. That the P.I.O. has replied within the statutory period. That the same was posted by registered A/D, however, the same has been retrieved non-availability of the addressee. P.I.O. acknowledges that the letters registered at his office 25.03.2010 has been Xerox copy of the same is enclosed. It is the case of P.I.O. that she has written letters on 15.03.2010 and posted on the same day, however, the Appellant insists that it was posted on 24.03.2010 and received on 25.03.2010. That it is completely false. That the F.A.A./Respondent No. 2 was informed from time to time as regards the above case. That the F.A.A./Respondent No. 2 has initiated a proper procedure to sort out the matter. That the P.I.O. followed proper procedure as well as provisions of the R.T.I. Act. According to Respondent No.1 appeal is liable to be dismissed.

It is the case of the Respondent No. 2 that the Appellant filed an appeal before Respondent No. 2 on 09.04.2010. That notices were issued to both the parties. That after hearing the parties and perusal of appeal the Respondent No. 2 passed the order on 18.05.2010 directing the Respondent No. 1 to provide the information to Appellant.

According to Respondent No. 2 he should be exempted.

4. The parties have produced on record the entire material. That Appellant has provided various correspondence, letters and even copy of written arguments before B.D.O on record. Respondent No. 1 also produced letters stating that entire information is furnished.

5. I have carefully gone through the records of the case and also considered the entire material on record. The short point that arises for my consideration is whether the relief prayed is to be granted or not.

It is seen that by letter dated 15.02.2010 the Appellant sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer ('P.I.O.)/Respondent No. 1. The information relates to certified copies of all/any letters exchanged between Appellant and the Panchayat Offices for the period from 01.01.2007 to date and any visits made. By reply dated 15.03.2010 the P.I.O./Respondent No.1 informed the Appellant that information is ready and to come and collect the same during office hours by paying the necessary fees. The Appellant disputes the date 15.03.2010 to which I shall refer a little later. In any case on 25.03.2010 the Appellant received the letter. Whether the appellant collected the information by making the payment is not known. However, letter produced by Respondent No. 1 states that 'copies enclosed'.

Being not satisfied the Appellant preferred an appeal before the first appellate Authority (F.A.A.)/Respondent No. 2. By order dated 18.05.2010 the Village Panchayat Secretary of V.P. Betalbatim is directed to provide the information to the Appellant free of charge within 7 days from the date of the order.

By letter dated 20.05.2010 the P.I.O. informed the Appellant to collect the information from V.P. Office within the stipulated time. This letter appears to be in time considering the order of F.A.A. There is endorsement "received 24.05.2010" Letter marked K dated 31.05.2010 addressed to Secretary shows at 12:15p.m. (28.05.2010) a small bundle of copies were handed over.

It appears that information is furnished.

P.I.O./Respondent No. 1 also states that information is furnished.

6. It would not be out of place to say here that right to know is a basic right of citizens of a free country. Long back Aristotle observed that people desire to know. Without adequate information a person cannot form an informed opinion. The Right to Information Act, 2005 has been enacted to provide for a legal right to information for citizens to secure access to information under the control of Public Authorities, in order to promote transparency and accountability in the working of every public Authority. The citizens and information seekers have, subject to few exemptions, an overriding right to be given information on matters in possession of State and Public Agencies that are covered by the Act.

Section 6 reads as under:-

“6. Request for obtaining information --- (1) A person, who desires to obtain any information under This Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to –

(a) the Central Public Information Officer or State Public Information Officer as the case may be, of the concerned public authority;

(the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

**Provided that
.....”**

The information seeker must specify the request or given particulars of the same. Request should not be vague. In the case at hand the Appellant has not specified nor given any dates but has asked generally.

It is pertinent to note that R.T.I. Act in general is the time bound programme between the Administrative and the citizen requesting information and every step will have to be completed within the time for presentation of request and disposal of the same presentation of First Appeal and disposal by the Appellate Authority.

Under Section 7(3)(a) since the information is to be paid for the period intervening between the dispatch of intimation (indicating further fee to be deposited) and payment of fee shall be excluded for the purpose of calculating the period of 30 days.

It is also pertinent to note Section 20 which is as under:-

“20. Penalties – (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that Central Public Information Officer or the State Public Information Officer as the case may be, has without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-Section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees:

Provided that Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him;

Provided further that burden of proving that he acted reasonably and diligently shall be on Central Public Information Officer or State Public Information Officer as the case may be.

(2)
.....”

7. R.T.I. Act gives to a citizen right to information and this right has been defined under Section 2(j) of the R.T.I. Act. An analysis of this Section would make it clear that the right relates to information that is held or under the control of any public authority. If the information is not available the same cannot be furnished.

A combine reading of Section 2(f), 2(i) and 2(j) of the R.T.I. Act would show that a citizen is entitled for disclosure of information which is in the material form with the public authority that is the information is available in an file or document and the like and the information and the right to seek do not include opinions, explanations, etc.

To be noted further that P.I.O. not required to collect, compile or create information for the information seeker but he is expected to provide the information available in the material form.

8. Now coming to the aspect of delay. If date 15.03.2010 is considered then there is no delay. However according to Appellant this letter was signed backdated. This is denied by Respondent No. 1. According to Respondent No. 1 the said letter was sent on 15.03.2010 only. In any case under R.T.I. Act the P.I.O. is to be given an opportunity to explain about the same in the factual matrix of this case.

Appellant contends that fine be levied on F.A.A. Under R.T.I. the F.A.A. is not covered under the Penal provisions of the R.T.I. Act. So also Sarpanch is not a party to the proceedings.

The Appellant has attacked the Judgment of the F.A.A. and wants this Commission to declare it null and void. However the said order is in Appellant's favour. Of course First Appellate Authority cannot impose penalty under R.T.I. Act.

9. In view of all the above, since information is furnished no intervention of this Commission is required. Regarding the aspect of delay P.I.O./Respondent No. 1 shall be heard on the same. Hence I pass the following Order:-

ORDER

Appeal is partly allowed. No intervention of this Commission is required as information is furnished.

Issue notice under Section 20(1) of the Right to Information Act, 2005 to the P.I.O./Respondent No. 1 to show cause as to why penal action should not be taken against him for causing delay in furnishing information. The

explanation, if any, should reach the Commission **on or before 21.09.2012**.
The P.I.O./Respondent No.1 shall appear for hearing.

Further inquiry posted on **21.09.2012 at 10:30a.m.**

The Appeal is accordingly disposed off.

Pronounced in the Commission on this **27th day of July, 2012**.

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

