

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Penalty No.72/2011

In

Complaint No.115/SCIC/2011

Mr. Menon J. Falcao,
H. No. 572, Menezes Bhatt,
St. Jose de Areal,
Salcete – Goa

.... Complainant.

V/s.

- 1) Public Information Officer,
Shri Krishna Gaude,
V. P. Secretary,
Village Panchayat St. Jose de Areal,
Salcete – Goa ... Opponent No. 1.
- 2) Public Information Officer,
Shri Adwin Carvalho,
V.P. Secretary,
Village Panchayat St Jose de Areal,
Salcete – Goa ... Opponent No. 2.
- 3) The present Public Information Officer,
Shri Rajendra Naik,
V.P. Secretary,
Village Panchayat St. Jose de Areal,
Salcete – Goa ... Opponent No. 3.

Shri John Nazareth, representative of Appellant.

Opponent No. 1 in person.

Opponent No. 2 in person.

Opponent No. 3 in person.

ORDER
(11.06.2012)

1. By Order dated 27.10.2011 this Commission issued notice under Section 20(1) of the Right to Information Act, 2005 to the Respondent to show cause why penal action should not be taken against him for causing delay in furnishing information.

The Complainant was also given an opportunity to prove that information furnished is incorrect and false.

2. In pursuance of the notice the P.I.O. Shri Krishna Gaude filed the reply which is on record. In short it is the case of the Opponent No. 1 that at the particular time he was holding charge of V.P. Secretary of Village Panchayat of St. Jose de Areal and was also holding charges of other Panchayats as Secretary and as such Opponent No. 1 was attending the Village Panchayat office of St. Jose de Areal only twice in a week. That

when the said information was sought by the Complainant, the Opponent No.1 directed the Peon of the Panchayat to locate the records for furnishing the information. That the Peon informed that the said records are not available. That the Opponent no. 1 also confirmed that the said records are not available in the cupboards. That accordingly the Opponent No. 1 informed the Complainant that the records are not available. It is further the case of the Opponent no. 1 that now he learnt that the said records were infected by white ants, and as such same were kept in ... for sunlight to destroy the white ants, which fact was not informed to the Opponent no.1 either by peon or other Staff and as such the Opponent No. 1 has given such information that the records are not available. According to the Opponent No. 1 no penal action be taken against him.

3. P.I.O./Advin Carvalho has also filed the reply. It is his case that he was posted as the Secretary of the Village Panchayat of Sao Jose de Areal for the period from 02.07.2011 till 30.11.2011. That prior to him, Shri S. K. Phadte (P.I.O.) was posted as the Secretary of the Village Panchayat of Sao Jose de Areal. That during the period of the above said Shri S. K. Phadte, as the P.I.O., the Complainant filed an application dated 05.04.2011 in order to procure certified copies/information. That then Secretary (P.I.O.) Shri S. K. Phadte, addressed a letter dated 23.04.2011 to the Complainant informing him that the information sought for by him is not available. That the Complainant filed an appeal and the F.A.A. directed the P.I.O. (Advin Carvalho) to trace the information and provide to the Complainant within 10 days of the said order. That the P.I.O. (Advin Carvalho) made constant efforts, through the Peon as well as personally to trace the file pertaining to the above said information, but, however, despite repeated efforts same could not be traced. That the Complainant was informed that the information sought for by him is not traceable. That the P.I.O. acted in utmost good faith and since the information could not be traced, the same could not be provided. That the file was missing much prior to the day when this P.I.O. took charge of the office of Village Panchayat of Sao Jose de Areal. That the P.I.O. acted with care and caution and as such not liable for any penal action.

4. The P.I.O./Subhash K. Phadte has also filed reply to written arguments filed by Complainant and the same is on record. He has raised

preliminary objections about maintainability. That in the application dated 05.04.2011 filed by the Complainant there is no mention of any request for specific information but the same is in respect of verification/certification of some NOCs. That the Application does not speak of any information sought by the Complainant. Moreover the Complainant was duly replied by a reply dated 23.04.2011 and the application as disposed off. That at the relevant time the Complainant was very much satisfied by the reply received by him as such he had not preferred any appeal against the reply furnished by this P.I.O. That the Complainant never asked for information from this P.I.O. That the application dated 05.04.2011 of the Complainant and reply dated 23.04.2011 of this Opponent is not the subject matter of the present appeal and therefore passing any order on the same would be out of the subject matter of the present appeal.

5. Heard Shri John Nazareth the representative of the Complainant and the concerned P.I.Os.

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

First I shall refer to the aspect of delay. The application is dated 25.04.2011 and the same was received in the office on 25.04.2011. The reply is dated 21.05.2011. By this it is informed that information from Sr. No. 1 to 3 is not available. This reply is in time. Appeal is filed on 07.06.2011 before First Appellate Authority and order is dated 01.07.2011 directing the Appellant to trace the information and to provide the appellant within 10 days from the date of the order. Though appellant has not produced the letter, P.I.O. Advin Carvalho has produced letter dated 11.07.2011 stating that information is not traceable. There is signature of Appellant on this letter. Good or bad this reply is also in time. Besides, this letter has not been challenged by the Appellant. Looking at this factual backdrop replies are duly furnished under R.T.I. P.I.O. should furnish information or otherwise within 30 days. Incidentally both replies are in time. Therefore the question of delay does not arise.

Another aspect is that the P.I.O. has to furnish the available information.

7. Other context is that information furnished is false and misleading.

It is to be noted here that P.I.O. Krishna Gaude by letter dated 21.05.2011 informed the Appellant that information is not available.

By letter dated 11.07.2011 the P.I.O. Advin Carvalho also informed that information asked is not traceable.

That P.I.O. Rajendra Naik joined on 30.09.2011 and furnished information on 15.10.2011. Records were partly eaten by white ants. That means information was furnished within 15 days of joining. This shows that file/records were very much available.

P.I.O. S. K. Phadte was from 25.04.2011 to 10.05.2011. No doubt application was filed during his tenure and he was not there for full term and as such he is not liable for any penal action. Besides, reply is in time. In his written arguments the Complainant has referred to S.K. Phadte, application filed on 06.06.2010, etc., however, since that matter is not before this Commission the same cannot be relied in this case. Anyway P.I.O. S. K. Phadte is warned that he should deal with R.T.I. requests properly. P.I.O. is supposed to give reasonable assistance to the information seekers.

So also P.I.O. Rajendra Naik is not concerned with delay or giving false information.

8. Looking at the above, it transpires that P.I.O. Krishna Gaude and P.I.O. Advin Carvalho gave misleading and incorrect information. I have carefully considered the reply filed by both. They have relied on peon and also personally made attempts. If file was missing they should have at least filed a complaint about missing. Both have not done so. It is to be noted here that P.I.O. plays a pivotal role in the scheme of R.T.I. P.I.O. is responsible to ensure compliances with the R.T.I. Act and facilitate the information seeker in obtaining the information. Under Section 5 every P.I.O. should extend all reasonable assistance in making the information available rather than putting hurdles or finding faults.

Again under Section 4(1)(a) every public authority shall maintain their records duly catalogued and indexed in a manner and the form which facilitates the right to information. The 'eating of white ants' shows how records are kept. It is high time the public Authorities should revamp the entire system of records management so as to keep the records properly as well as to facilitate delivery of information in time.

9. Whatever the explanation actions of P.I.O. Krishna Gaude and Advin Carvalho amount to furnishing misleading information. P.I.Os should note

and also 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 legally not permissible. Besides it is socially abhorring. No doubt Complainant suffered detriment on account of failure to provide correct information. Appellant through his representative came many times to the Commission with the hope that correct information would be furnished. This naturally caused mental and physical harassment to the Appellant. In this factual scenario instead of penal provision, this Commission is considering compensating the Appellant for the loss and detriment suffered by him in having pursued the matter. Secondly, this approach will have a telling effect as it may drastically improve work culture and also change the outlook. I am aware that under Section 19(8)(b) the powers of Commission are limited as far as compensation is concerned.

This Commission under its powers under Section 19(8)(b) of the R.T.I. Act awards compensation of Rs.6000/- (Rupees Six Thousand only) to the Complainant for the loss and detriment suffered by him in pursuing this matter. This amount is to be paid by the Public Authority Village Panchayat St. Jose de Areal, Salcete-Goa from the funds of Public Authority. The Public Authority/Village Panchayat is free to recover the said amount of Rs.6000/- from Shri Krishna Gaude and Shri Advin Carvalho, if so desires.

ORDER

The Public Authority/Village Panchayat of St. Jose de Areal, is hereby directed to pay a sum of **Rs. 6000/- (Rupees Six Thousand only)** to the Appellant as **compensation**. The said amount to be paid to the Complainant directly **within 30 days from the receipt of this Order**, as observed in para 9.

A copy of the Order be sent to the Village Panchayat of St. Jose de Areal, Salcete-Goa.

The proceedings are disposed off.

Pronounced in the Commission on this **11th day of June, 2012**.

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

