

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

**Penalty No.60/2011
In
Complaint No. 200/SIC/2010**

Shri Jude L. Vaz,
H. No. 254, Tariche Galu,
Bardez - Goa

... **Complainant.**

V/s.

Public Information Officer,
Member Secretary,
Goa State Commission for Women,
Panaji - Goa

...**Opponent.**

Complainant in person.

Opponent in person.

ORDER
(08.06.2012)

1. By Order dated 25.08.2011 this Commission issued notice under Section 20(1) of the Right to Information Act, 2005 to the P.I.O./Opponent to show cause why penalty action should not be taken against him for causing delay in furnishing the information.

2. That in pursuance of the notice the Opponent No. 2 appeared and filed the reply which is on record. It is the case of the Opponent No. 2 that vide Government Order dated 20.09.2010 the Opponent No. 2 was asked to hold the charge for the post of Member Secretary, Goa State Commission for Women, in addition to his own duties as Custodian of Evacuee Property and in response of the Government Order the Opponent No. 2 assumed the charge for post of Member Secretary, Goa State Commission for Women on 19.10.2010. That prior to his taking over the charge Miss Margaret Fernandes was holding charge of the post of Member Secretary and P.I.O., Goa State Commission for Women and vide the Government Order cited above she was transferred as Managing Director, Goa State SC & OBC Finance Development Corporation Ltd. at Patto, Panaji. That subsequently

Ms. Margaret Fernandes has been transferred from the post of Managing Director, Goa State SC & OBC Finance Development Corporation Ltd and presently she is working as Addl. Inspector General Prisons at Collectorate of North Goa, Panaji. That Kum. Margaret Fernandes, his predecessor, vide her explanation dated 15.04.2010 has sufficiently brought on record the circumstances for delay in furnishing the information to the Complainant.

3. Notice was issued to Ms. Margaret Fernandes and she has filed the reply which is on record. In respect of delay the Opponent states that she had no staff as per designated post and many a time had to even do ministerial work like entry, Xeroxing, posting, etc in public interest and as such the undersigned had at all times when in the Commission tried to deliver to the public and had at no point of time acted deliberately to the detriment of any person. That admittedly the Opponent/P.I.O. might have had a lapse owing to the situation brought about by the Administrative shortcoming of the office. That there was no malafide intention to deny the Complainant any information. That at no point of time was any information concealed, destroyed by her from the file, nor was any incorrect, incomplete and misleading information furnished to the Complainant. According to her natural justice be done for any minor unintentional lapse, if any.

4. Heard the Complainant, Opponent/P.I.O. and Adv. A. Talaulikar thought he is not concerned with the P.I.O., Ms. M. Fernandes.

According to the P.I.O. Complainant has no locus standii. Secondly no appeal preferred but Complainant just comes and files penalty proceedings. According to her Complainant Jude was not aggrieved nor has locus standii to file the present proceedings.

Complainant also relied on complaint, rejoinder, etc. in detail.

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

Admittedly there is delay in furnishing the information. The application was dated 17.11.2009 and according to the Complainant he received the same when Complaint was filed.

Under Section 20 of the R.T.I. Act the Information Commission must satisfy itself that P.I.O. has without reasonable cause refused/not furnished information within specified time frame. The penalty can be imposed only if there is no reasonable cause for not furnishing the information within the period of 30 days. The word 'reasonable' has to be examined in the manner which a normal person would consider it to be reasonable.

The P.I.O. has stated in para 4 of the reply dated 10.02.2012 the circumstances which led to the delay. I have perused the same. The P.I.O. attributes the delay to shortage of Staff and administrative shortcomings of the office.

I have perused some rulings of C.I.C. on the point. I need not refer the same in detail. The Central Information Commission considered various aspects and held that in view of earnest efforts put by the P.I.O. the delay becomes excusable and accordingly penalty was not imposed.

6. However this matter does not end here. It was contended that Complainant has no locus standii to file/carry the present proceedings.

This Commission has observed (Order 25.08.2011) as under:-

“First of all the information is sought by Shri Ubaldo T. Menezes. On the basis of a letter dated 09.03.2010 the Complainant has filed the Complaint. This letter though purported to be an authority letter the same is not properly worded. However, considering the nature of the Act this time some laxity is given to the Complainant. However, in future he should take note of the same.”

The same has been again raised in the present penalty proceedings. I shall address to this issue herein.

I do agree that letter given by Shri Ubaldo T. Menezes is not proper. Section 6(1) entitles any person to make a request for information specifying only the particulars of information. However, if there is any suspicion, the information cannot be supplied if the said suspicion is allayed.

In Chander Verma v/s. Employee's Provident Fund Organisation (E.P.F.O.) (Decision No. 695/IC(A)/2007, F.No. CIC/MA/C/2007/00073 dated 15.05.2007) the gist of the order is as under:-

“The R.T.I. Act empowers every citizen to seek information. And if not satisfied with the response of C.P.I.O., he should approach the

Commission with a request to redress grievances on such matters. Therefore, it is the information seeker who should have filed the Complaint, rather than a third person taking the matter on his behalf.”

In *N.R. Dudeja v/s. National Aviation Company of India Ltd.*, (Decision No. 2149/IC(A)/2008, F. No. CIC/MA/A/2008/00220 dated 01.04.2008) it was held that there is no justification for a third person to seek information on behalf of someone else.

In the case before me information was sought by Ubaldo T. Menezes and Complaint was filed by the Complainant Jude L. Vaz.

7. It was next contended by the P.I.O./Opponent that Complaint is not maintainable and as such penalty proceedings are not maintainable.

This Commission has held that Complaint is maintainable. However, subsequently this Commission came to know about the following rulings:-

(i) In Writ Petition No. 132 of 2011 with Writ Petition No. 307 of 2011, *Reserve Bank of India V/s. Rui Ferreira & Others*, the Hon’ble High Court of Judicature at Bombay Goa Bench also held that it is not the intention of Parliament to permit parties who seek information to bypass the appeals provided by the Act. It was also observed that it was not permissible for the State Information Commission to entertain the complaint made by Respondent No. 1 under Section 18 of the Act.

(ii) In *Chief Information Commissioner & Another v/s. State of Manipur & Anr.* (Civil Appeal No. 10787-10788 of 2011 dated 12.12.2011) the Hon’ble Supreme Court has observed that the remedy for such a person who has been refused the information is provided under Section 19 of the Act. It was observed as under:-

“Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the

opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act.....”.

In any case in view of the above, the remedy lies of First Appeal.

In fact the above referred ruling at (i) is of this Commission who has held that Complaint is maintainable.

In the said case Reserve Bank of India v/s. Rui Ferreira (Supra) the Hon’ble High Court held as under:-

“14. Thereafter, it seems that the Commission has proceeded to impose penalty on the P.I.O. who is the petitioner in Writ Petition No. 207 of 2011, for not complying with its order under Sec. 18 by imposing a penalty under Sec. 20. Since the order under Section 18 dated 14.06.2010 itself found to be without jurisdiction and liable to be set aside, the order of the Commission cannot be upheld and the order of the Commission under Sec 20 imposing penalty for non-compliance of such an illegal order must also be set aside and is accordingly set aside.”

8. As stated above there is delay in furnishing information. Under R.T.I. delays are inexcusable. It leads to the harassment of a common man which is not permissible. Besides, it is socially abhorring. P.I.O. is warned that he should not repeat the same in future.

In the factual matrix of this case and in view of all the above it is not possible to hold the P.I.O. responsible for penalty and the delay is to be condoned.

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

ORDER

The show cause notice is discharged and penalty proceedings are dropped.

The penalty proceedings are accordingly disposed off.

Pronounced in the Commission on this 08th day of June, 2012.

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

