

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

**Penalty No.22/2011
In
Complaint No.451/SCIC/2010**

Shri Ajit L. Desai,
H. No. 1226/3,(Old) 93-A(New),
Voilowado, Pansulem,
Canacona - Goa Complainant.

V/s.

The Chief Officer,
Public Information Officer,
Canacona Municipality
At Chaudi – Canacona ... Opponent.

Adv. A. Desai for Complainant.
Opponent in person.
Shri S. Komarpant, representative of Opponent.

ORDER
(24.07.2012)

1. By Order dated 16.02.2011 this Commission issued notice under Section 20(1) of the Right to Information Act, 2005 to the Opponent/P.I.O to show cause why penal action should not be taken against him for causing delay in furnishing information.

2. In pursuance of the notice the Opponent/P.I.O has filed the reply which is on record. It is the case of the Opponent that information is required to be furnished to the Complainant as is existing on the date of application on which such information is called for. In the present case the Complaint was made by the Complainant in respect of the illegal construction on 13.04.2010 and the application under R.T.I. Act was also moved on the very same day to ascertain as to what action was taken by the Respondent on the complaint which was given on the very same day. That there was no question of taking any action on the application dated 13.04.2010 filed by the Complainant as there was no time to take action on the said application. Hence there could not be any reply to be given as on the date of the application to the Complainant since both the applications were made on one and the same day. That the reply was given to the Complainant in response to his complaint dated 13.04.2010 to remain present on 19th May 2010 for resolving grievances and hence there was no

case of refusing the information called for. It is the case of the Opponent that there is procedure prescribed under the Goa Municipalities Act for taking action against the illegal construction. No action can be taken against any illegal construction by the Chief Officer without following the procedure of law. That it is not known as to how the Complainant imagines that the Respondent has to take action against the alleged construction at the very same moment when the application was moved. This is because simultaneously the application under R.T.I. was moved by the Complainant. That the information called was subsequently furnished to the Complainant before passing the order by this Commission on 16.02.2011. According to the Opponent there is no deliberate act on the part of the respondent to delay the information called for by the Complainant.

3. Heard Advocate for Complainant. Complainant as well as Opponent have filed exhaustive written arguments which are on record. The Complainant has filed the Written Arguments dated 21.07.2011 and also relied some applications of one Pascoal Agnelo Lacerda and one Judgment of a criminal case, F.I.R., Chapter case record etc.

The Complainant also filed the copy of Judgment of Hon'ble High Court of Delhi.

The Opponent has filed the Written Arguments dated 07.09.2011.

According to Opponent information was subsequently furnished to the Complainant before passing the Order.

Written clarifications of the Complainant related to the written notes of arguments of the Respondent dated 07.09.2011 are on record.

4. I have carefully gone through the records of the case and also considered the arguments filed by the parties. It is seen that the Complainant filed a complaint dated 13.04.2010 to the Chief Officer of Canacona Municipality for demolition of compound wall. On the same day the Complainant filed an application dated 13.04.2010 seeking certain information that is, action taken. It is to be noted here that under R.T.I. information as held by public authority or as available with the public Authority is to be furnished. In fact P.I.O. could dispose the same on the very day. However, P.I.O. by letter dated 14.05.2010 requested the Complainant to remain present on 19.05.2010 for resolving the grievances.

The Complainant has filed a protest application and along with it a letter dated 26.07.2010. The Opponent on their part also has filed the copy of the same. This shows about action taken. Again it is to be noted here that available information is to be furnished and this meets the requirement of law under R.T.I.

Opponent also filed an application which is on record stating that information is furnished much prior to the passing of order.

I need not go in details but admittedly there is a delay.

5. It is to be noted that under R.T.I. this Commission is concerned with information only. This Commission is not grievance redressal forum nor can direct the Public Authority to furnish the information. This Commission also cannot overlook the fact that Complainant himself was aware that the information he was seeking was not with the Public Authority on that particular day. R.T.I. Act cannot be stretched to such an extent that even if information is not there the same should be created and furnished.

6. I now proceed to consider the question of imposition of penalty on the Opponent under Section 20 of the R.T.I. Act. The penalty can be imposed only if there is no reasonable cause for not furnishing the information within the period of 30 days. Under Section 20 of the R.T.I. Act the Information Commission must satisfy itself that P.I.O. has without reasonable cause refused nor furnished information within specified time frame. The word 'reasonable' has to be examined in the manner, which a normal person would consider it to be reasonable. I have perused the reply given by the Opponent. I have also perused the ruling relied by the Advocate for Complainant and some rulings of C.I.C. and Hon'ble Gujarat High Court and High Court of Punjab and Haryana.

Under R.T.I. Act delay is inexcusable. Public Authorities must introspect that non-furnishing of information lands a citizen before F.A.A. and this Commission resulting in unnecessary harassment of an information seeker/common man which is legally impermissible. Besides, it is socially abhorring. R.T.I. Act provides Rs.250/- per day. Maximum penalty of Rs.25,000/- could be imposed on the P.I.O., however, there is a letter dated 26.07.2010 where information has been furnished. Apart from that the

Complainant has not approached the First Appellate Authority which is a must in view of the ruling of the Hon'ble Supreme Court.

However considering the factual matrix of this case I am inclined to take a lenient view of the matter. I feel that imposition of penalty of Rs.10,000/- (Rupees Ten Thousand only) would meet the ends of justice.

Hope P.I.Os in general will not be recalcitrant in the discharge of statutory duty in future.

7. 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 P.I.O./Opponent in **three monthly instalments** for the month of October, November and December, 2012 by the Directorate of Accounts. The said amount be paid in Government Treasury.

In case the Opponent wants to pay the same in one/two instalments he is free to do so. A copy of the Order be sent to the Joint Director of Accounts, South Branch, Margao – Goa; for execution and recovery of penalty from the Opponent.

The penalty proceedings are accordingly disposed off.

Pronounced in the Commission on this **24th day of July, 2012.**

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

