

GOA STATE INFORMATION COMMISSION

Ground Floor, Shrama Shakti Bhavan, Patto Plaza, Panaji – Goa.

CORAM: Smt. Leena Mehendale, State Chief Information Commissioner

Appeal No. 116/SCIC/2012

Decided on 20/06/2014

Dr. Kalpana V. Kamat,
Calderia Arcade, 1st Floor,
Bhute Bhat, Mestawado,
Vasco, Goa.

----- Appellant

V/s

1) The Public Information Officer,
Goa Public Service Commission,
EDC House, Block “C” 1st Floor,
Dada Vaidya Road, Panaji – Goa.

----- Respondent

2) The First Appellate Authority,
Goa Public Service Commission,
EDC House, Block ‘C’ 1st Floor,
Dada Vaidya Road Panaji – Goa.

----- Respondent

Adv. S.S. Rebello present for PIO

ORDER

RTI application filed on : 17/04/2012
PIO replied : 15/05/2012
First Appeal filed on : 06/06/2012
First Appellate Authority order : 12/06/2012
Second Appeal filed on : 18/06/2012

1) RTI application dated 17/04/2012 was made to the PIO of GPSC (Goa Public Service Commission). A reply was sent by the PIO on 15/05/2012 asking the appellant to deposit a fees of ₹ 146/- (Rupees One Hundred Forty Six Only) towards the cost of the reply. A first appeal was filed on 06/06/2012, on the ground that the appellant has not received any reply or information from the PIO till 17/05/2012, i.e the end of 30 days.

2) The First Appellate Authority (FAA) has noted that the Respondent had posted the said letter dated 15/05/2012 by ordinary post and the appellant also admitted that she received it on 19/05/2012. The contention of the appellant was that since she was not provided the information nor any intimation before the expiry of the 30 days as granted by the RTI Act, the information should be furnished free of cost. The appeal was dismissed citing the following reason.

3) *“As per the provisions of sub section (3) of Section 7 of the RTI Act, 2005 the counting of 30 days starts from the date when the PIO receives the application; counting stops when the PIO intimates the applicant about the payment of further fees and counting resumes when the citizen has paid the required fee for obtaining the information. So, the time limit between intimation for the payment of further fees by the PIO, and the payment of such fees by the applicant shall not be included in the prescribed time limit of 30 days. If the PIO does not provide the information asked within the time limits above, the information asked could be treated as being refused. In the instant case the appellant failed to make payment for the information in spite of receipt of intimation from Respondent. Therefore, she has not right to claim the information free of cost.*

4) This reasoning is a verbatim quotation from Second Appeal No. CIC/SG/A/2012/001127, Mr. S.S. Upadhyaya, Vs. Mr. Goutam Chatterji PIO and General Manager, Ministry of Tourism, decided by Central CIC on 18/05/2012.

The appellant filed second appeal on the ground that under the RTI Act Sec 7(1) every applicant is entitled to receive within 30 days either the actual information or intimation that the information is rejected. Since the PIO has failed to ensure this, she is entitled to receive information free of cost

5) It is therefore relevant to examine these sections-

7 (1) deals with the disposal of the request – *Subject to the proviso to sub- section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:*

6) Section 7(2) is also relevant and it states – *“If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request”.*

7) Section 7(3) (a) deals with a situation where information is to be provided on payment of fees – *the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty, days referred to in that sub-section.*

8) Section 7(6) deals with providing information free of cost when a PIO fails to furnish the same within the specified time.

9) The Respondent PIO had filed the reply to the second appeal on 04/04/2014. To explain the phrase “further fees” used in Section 7(3)(a), the Advocate of respondent has cited another Judgment from the CIC. In file No.CIC/OP/C/2009/000058-AD/ decided on 15/03/2010 in case of Mr. Sukhlal v/s South Eastern Railway, Adra, it is stated –

“ Thus, there is provision for charging of Fee only under Section 6(1) which is the application fee, Section 7(1) which is the fee charged for photocopying etc and Section 7(5) which is for getting information in printed or electronic format. But there is no provision for any further fee and if any further fee is being charged by the Public Authorities in addition to what is already prescribed under Sections 6(1), 7(1) and 7(5) of the Act, the same would be in contravention of the Right to Information Act. The “further fee” mentioned in Section 7(3) only refers to the procedure in availing of the further fee already prescribed under 7(5) of the RTI Act, which is “further” in terms of the basic fee of ₹ 10/- Section 7(3), therefore, provides for procedure for realizing the fees so prescribed”.

10) The matter finally came up for hearing on 04/04/2014, when the appellant, the PIO and Advocate for PIO Shri S.S. Rebello were present. The Advocate for PIO, in addition to the written reply, also argued the matter orally. In short the PIO claims that since the application for information was received on 17/04/2012 and their letter asking to pay the required fees was posted on 15/05/2012, which is the 29th day, it must be considered that adequate action has been taken within the period of 30 days. It is already admitted that the PIO’s letter has been received (on 19/05/2012). Since the appellant has not paid the fees, she is not entitled to get the information till payment is made. Moreover the decision of the PIO is also upheld by the FAA.

11) It was further stated by the learned Advocate that the PIO is adequately aware that since the PIO has already consumed a time of 29 days in sending intimation for the fees, it leaves only one day in their hands to supply information hence the information will be supplied on the same day. When the fees are paid, there will be this obligation for the PIO and the PIO is seized of this obligation. However reliance is to be placed on the judgments in Mr. S.S. Upadhyaya, Vs. Mr. Goutam Chatterji PIO and General Manager, Ministry of Tourism, decided by Central CIC on 18/05/2012 and the PIO's action must be taken as within the time frame. In view of the decision of FAA the PIO is not under obligation to supply the information of free of cost. Since the time of 30 days has not been consumed, the decision of FAA should be upheld.

12) PIO's should take note of a paradigm shift introduced by RTI Act. As per all earlier procedures if a public office was given 30 days for a disposal then dispatching the necessary communication including an interim communication on 30th day was the norm. The RTI grants a period of 30 days to PIO for his reply. Thus, 30 days is the period by which final reply must be given. The PIO's dispatch about any interim action has to be obviously prior to that.

13) In her oral submission the appellant has raised a pertinent question. After receiving application under RTI it was for PIO to give the information or its rejection within 30 days. If the applicant has not received any communication within 30 days then it must be held that information is rejected. Section 7(2) must be read in the favour of the applicant who has, on the 31st day of non -receipt of any intimation, no means to know the mind of the PIO. Is she supposed to presume that PIO must have been righteous enough to have dispatched the necessary intimation? She and many other RTI applicants in past have had the experience of not receiving any intimation about their RTI applications. If an appeal is to be filed, then the RTI applicant has to act within the time limit of 30 days to file the appeal, otherwise the FAA can refuse to condone delay and reject the first appeal on the ground of delay. Hence the appellant cannot be expected to wait indefinitely for the reply of PIO. Hence her action of filing 1st appeal on 31st day was correct. Further, once an appeal gets filed against apparent non- action of PIO in supplying information, it must be held that the PIO was a defaulter to the RTI question, and hence must give information free of cost. The appellant further prayed that action be taken and penalty be imposed on the respondent.

14) In the instant case too, she has waited for intimation upto 30 days and filed her appeal on the 31st day. The PIO claims to have dispatched the reply by ordinary post which has reached her only on 19/05/2012 as can be seen from the exhibit 'C' and 'C' (page 4 and 5) filed by her along with the memo of the second appeal. Page No. 5 is a copy attested by the appellant bearing the postal department seal dated 19/05/2012. This confirms that she received the intimation sent by PIO on 19/05/2012, i.e on 33rd day.

15) This brings me to the question whether the PIO will furnish copies on payment or otherwise. The PIO claims that since they received the RTI application on 17/04/2012 and posted a reply on 15/05/2012, therefore this action is within 30 days as required under the RTI Act, and hence the appellant must pay the fees for information.

16) I have to hereby analyse this claim as per the requirements of the RTI Act. Section 7(1) makes it clear that the PIO shall, within 30 days of the receipt of request, either provide the information or reject the request. It is therefore necessary to understand that if the Applicant is to be called for inspection or for making the payment of fees as per Section 7(3), then it is an interim action creating an obligation on the RTI applicant, only if she or he actually receive such intimation. It is therefore proper that the said letter be issued in advance. An intermediary letter issued on 30th day cannot be considered as in compliance with the requirements of Section 7(1). Similarly such a letter, issued close to 30th day, will be technically correct, although it would reduce the chance for PIO to be able to actually supply information within the remaining short period.

17) In this regard Department of Personnel & Training North Block, New Delhi-110001 have issued Office Memorandum No. F.No.12/31/2013-IR dated. 11.02.2013. which states as below:

“ Timely intimation about payment of additional fee under RTI Act 2005”.
It has been brought to the notice of the Central Information Commission that some CPIOs inform the information seeker about the additional fee under sub section 7 (3) of the RTI Act at the fag end of the thirty days period prescribed for providing the information under sub-section 7(1) of the RTI Act.

2. *The Central Information Commission in one of its orders has mentioned that while there cannot be any hard and fast rule about when exactly the intimation about the photocopying charges should be conveyed to the information seeker, it is implied in the prescribed time limit that the demand for the photocopying charges must be made soon after the RTI application is received so that the information seeker has time to deposit the fees and receive the information within the prescribed thirty days period. If the information sought is not voluminous or is not dispersed over a large number of filens, computation of the photocopying charges should not be a time consuming task. As soon as the RTI application is received, the holder of the information should decide about how much information to disclose and then calculate the photocopying charges so that the CPIO can immediately write to the information seeker demanding such fees.*

3. *This may be brought to the notice of all concerned for compliance”.*

18) This brings me to make 3 observations:-

- I) As observed by CIC Delhi there cannot be any hard and fast rule about when exactly the intimation about the photocopying charges should be conveyed. In the instant case, the PIO's action of dispatching such a letter on 29th day cannot be faulted, being technically correct. The action to dispatch the same through ordinary post could have hypothetically resulted in non- receipt which was however averted as the applicant received it on 19/05/2012.
- II) There is a presumption in government that a communication whose dispatch entry is taken in the outward Register of the office is presumed to have been dispatched and delivered. The RTI Act has brought a paradigm shift. Such a presumption in favour of Government offices will not continue to apply on the face of the RTI Act which is more concerned about the actual receipt of information or intimation, as the case may be, by the applicant seeking information. Thus it appears to be better for the PIO to send the intimation by Registered post and also insist on collecting a copy of receipt by addressee from the postal department which ensures the actual delivery.
- III) The question posed by the appellant namely, how long is the applicant supposed to wait before filing the appeal if no information is received on the 31st day is an important question. Absolute non information from the PIO definitely brings a sense of helplessness to the appellant which cannot be

permitted under the RTI Act. Therefore although the RTI Act itself does not specify any time limit as to when an intimation for payment of fees would be considered as “Intimation in time,” and despite the interpretation given in CIC/SG/A/2012/001127, Mr. S.S. Upadhyaya, Vs. Mr. Goutam Chatterji PIO and General Manager, Ministry of Tourism, quoted supra, I consider it reasonable that the applicant may wait only for seven days before filing the 1st appeal under section 19 and any intimation or reply received from PIO after filing of the appeal can be held as a delayed communication.

19) The above observation will have relevance to the cases arising in future. For instant case however, I have to hold that the action of the PIO in sending intimation for fees on the 29th day, which is nonetheless received by the applicant on the 33rd day, remains an “intimation in time” within the boundaries of technicality.

20) In view of the above the applicant is directed to pay the intimated fees of Rs. 146/- to the office of PIO and the PIO will be duty bound to ensure the delivery of the information within two working days. Liberty is given to appellant that if she is not satisfied with the reply of the PIO or receives it late, she can approach the CIC directly under section 18 (f) of the RTI Act.

The appeal is dismissed as above. Parties to be informed.

Sd/-
(Leena Mehendale)
Goa State Chief Information Commissioner
Panaji – Goa.