

GOA INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Penalty Case No. 09/2008 in
Appeal No. 59/SCIC/2008

Shri. Kashinath Shetye,
Bambino Building, Alto Fondvem,
Ribandar, Tiswadi – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
Corporation of the City of Panaji,
Panaji - Goa.
2. First Appellate Authority,
The Director,
Municipal Administration/Urban Development,
Panaji – Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner

(Per A. Venkataratnam)

Dated: 15/12/2008.

Appellant in person.

Adv. Shivan Desai for Respondent No. 1. Respondent No. 2 is absent.

ORDER

This disposes off the notice dated 29/09/2008 issued to the Respondent No. 1 Shri. Melvin Vaz, Commissioner of Corporation of City of Panaji and the Public Information Officer herein to show cause as to why the penalty should not be imposed on him for delay in giving the information to the Appellant. Earlier, in the main second appeal No.59/SCIC/2008, an order was passed to give the information to the Appellant within 10 days of the order and to pay a compensation of Rs.5000/- to the Complainant. The documents were given on 7/10/2008 to the Appellant after the order of this Commission. On the issue of compensation, the Respondent No. 1 moved the Hon'ble High Court of Bombay, Panaji Bench. The copy of the writ petition is not filed nor was it mentioned whether it is admitted. On the issue of the show cause notice to the proposed penalty, a reply was filed by the Respondent No.1 on 22/10/2008.

2. The full details of the case are mentioned in main order dated 29/09/2008. However, a brief recapitulation will be in order. A request was made by the Appellant on 5/5/2008 for information on 8 points

...2/-

alongwith the copies of the documents. In addition to the specific questions, he has also asked for the inspection of the files and records of the Corporation of City of Panaji (CCP). No information was given nor any reply was sent to the Appellant in the statutory period of 30 days. Thereafter, after a first appeal was filed by the Appellant, part information was given on 25/06/2008. The First Appellate Authority, Respondent No. 2 has, thereafter, directed the Respondent No. 1 to give complete information within 10 days of his order dated 14/7/2008 which expired on 23/7/2008. The Respondent No. 1 agreed before the Respondent No. 2 to give the documents which were mentioned by the First Appellate Authority. However, a letter was issued on 7/8/2008 by the Respondent No. 1 stating that the said documents were not available. This is a complete turn around of what he stated before First Appellate Authority. Thereafter, the Appellant has filed this second appeal asking for the information already requested by him in full and also made a request to treat the appeal as "complaint" if necessary. The exact prayer was "the appeal may convert into complaint if required and the amendment as may be allowed." In the second appeal, he has assailed the order of the First Appellate Authority for non-execution of his own order and also asked for the penalty to be imposed on the Public Information Officer under section 20 of the Right to Information Act, 2005 (RTI Act for short).

3. The second appeal under section 19(3) lies against the order of the First Appellate Authority passed under section 19(1) of the RTI Act. As the second appeal before me assailed the order of the First Appellate Authority, I did not deem it necessary to convert the second appeal into a complaint. The Commission has always treated this as the second appeal and used the terminology in as many words. It is the practice of this Commission to refer the parties in the second appeal as Appellant who moved the appeal and the opposite parties as the Respondents. In a complaint case however, the person moving the complaint is referred as Complainant and the opposite parties are referred as the Opponents. The second appeal before me is never converted into a complaint and hence, I have awarded payment of compensation to the Appellant for the inconvenience caused to him. In the case of complaints, the Commission is not awarding the compensation even though there are compelling circumstances to award the compensation in deference to a stay granted by the Hon'ble High Court of Bombay at Goa, Panaji bench

in the Writ Petition No. 326/2007 in the case of Eknath Talkar V/s. Goa State Information Commission. These facts are brought on record now as the Respondent No. 1 stated that he has moved the Hon'ble High Court of Bombay against the awarding of compensation and also because the Commission goes unrepresented in the Hon'ble High Court at the time of hearing of the Writ Petition against the Commission.

4. When the case for penalty was taken up, the Appellant, suddenly has made an application withdrawing his prayer of imposing penalty on the Public Information Officer. He has not informed any reason for withdrawal of his prayer. Earlier, the very same Appellant not only has requested this Commission in the second appeal for the imposition of penalty on the Public Information Officer but also has requested for starting disciplinary proceedings against the Public Information Officer for "destroying information and FIR may be lodged in the Police Station for tracing licences through the First Appellate Authority". He has made a similar prayer before the First Appellate Authority who has rightly dismissed the prayer as he has no power to initiate penalty proceedings under section 20 of the RTI Act. I may also mention that the very same Appellant has filed a caveat application before the Hon'ble High Court of Bombay at Goa against any application for grant of stay by the Hon'ble High Court against the order dated 29/09/2008 of the Information Commission. He had also alleged in his statement earlier before the Commission that pressure was brought on him by destroying the hand cart of his brother when he refused to "compromise the matter through V.V. Sawant, Municipal Engineer". It is, therefore, surprising that he has now asked for withdrawal of his prayer of imposing penalty against the Public Information Officer.

5. Section 20 of the RTI Act empowers the State Information Commission at the time of deciding any complaint or appeal to form an opinion about the circumstances under which the Public Information Officer refused the information or destroyed the information knowingly or has given incomplete, incorrect or misleading information. The malafides of the action of the Public Information Officer though prime facie, appears to the Commission at the time of the order, it could be rebutted by the Public Information Officer and only he is responsible for proving that he acted reasonably and diligently while disposing off the request for information under the RTI Act. The burden of proof is shifted

to him under second proviso to section 20(1) of the RTI Act. Against the background mentioned in para 4 above, the application of the Appellant withdrawing his prayer (ii) of the appeal memo dated 28/7/2008 is rejected.

6. The conduct of the Public Information Officer in not giving the information in time initially, giving partial information after the first appeal is filed, stating before the First Appellate Authority that the remaining information is available and would be given and finally giving the documents on 7/10/2008 only after the Commission's order proves that the actions of the Respondent No. 1 are not bonafide. In this background, I will now examine the reply filed by the Respondent No. 1.

7. The Respondent No. 1 has submitted his say of 5 pages and consisting of 12 paras and did not answer any of the points mentioned above namely about the delay, about initially not stating why the documents were not available and finally giving the documents only after the intervention of First Appellate Authority and second appellate authority. Only one line mentioned in the para No. 11 cryptically states "it is for the reasons beyond the control and the capacity of this Respondent that the information sought for by the Complainant initially could not be provided in the form required". To begin with, throughout the statement of the Appellant, an effort is made to convert the appeal into a complaint by referring the Appellant as Complainant and the appeal as the complaint. This is obviously an effort to challenge the order regarding awarding of compensation in the back drop of the stay granted by the Hon'ble High Court of Bombay at Goa. He has not further mentioned what are the reasons beyond his control and capacity. Further, the very letter supplying the documents on 7/10/2008 to the Appellant starts with the phrase "as directed by the Goa State Information Commission". The Respondent No. 1 has to know very clearly that he has to discharge the responsibility of supplying information within statutory period as per the RTI Act, on his own. He should not wait for the orders of the appellate authorities to do so. The very fact that he has given the documents now shows that he could have given them earlier also. A feeble attempt was made throughout the course of the hearing of both the appeals and penalty proceedings that the remaining 3 documents were not given because they were not available in the records and were taken out of the file to feed into a

computer. When the documents are available within the premises of the CCP, it is irrelevant whether they are in the files or in the computer of the CCP. This is obviously an afterthought to say that the records were not given because they were digitized and stored in their own computers. The reply at para No. 5, infact, puts the blame on the Appellant himself for not having made any attempt to inspect records within 10 days of the order of the First Appellate Authority. As I have mentioned earlier, the original request is for the issuance of the documents. The request for inspection of the registers/ records of the CCP is an additionality. Not to supply the documents available and to put blame on the Appellant himself for not inspecting the records and requesting for further inspection is irrelevant and out of place. In any case, it does not discharge the responsibility of the Respondent No. 1 to prove that he has acted diligently while disposing off the request for information. With the result, the reply submitted by the Respondent No. 1 is not at all satisfactory and is hereby rejected.

8. As I have observed in the main order, there is a delay of 124 days for giving complete information as follows: -

a) Date of filing of request	--	5/5/2008.
b) Date before which the documents should have been given	--	4/6/2008.
c) Part information given after filing first appeal	--	25/06/2008.
d) Complete information given after the order in second appeal	--	7/10/2008
e) Total delay from 5/6/2008 to 7/10/2008	--	124 days.

The penalty to be imposed under section 20 is to the extent of Rs.250/- per day. The total penalty works out to Rs.31,000/- limited to a maximum of Rs.25,000/-. However, a token of penalty of Rs.10,000/- is levied on the Respondent No. 1 which should be recovered from his salary of January, 2009. If the CCP does not recover the amount, Director of Municipal Administration, First Appellate Authority, should recover this amount from the grants payable to CCP.

Pronounced in the open court on this 15th day of December, 2008.

Sd/-
(A. Venkataratnam)
State Chief Information Commissioner

