

GOA STATE INFORMATION COMMISSION

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

Appeal No. 49/2006/CCP/P

M. L. Ahuja
Son of Shri M. R. Ahuja
Residing at # 07,
Caculo Housing Colony,
Miramar, Panaji - Goa.

..... Appellant.

V/s.

1. Public Information Officer
The Commissioner,
The Corporation of the City of Panaji,
Panaji - Goa.
2. First Appellate Authority
Director of Municipal Administration,
Government of Goa, Panaji - Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per A. Venkataratnam)

Dated: 23/02/2007.

ORDER

This disposes off the show cause notice issued on 3/01/2007 to the Respondent No. 1 namely, Commissioner of Corporation of City of Panaji asking him to show cause why the penalty of Rs.250/- per day should not be imposed on him for delaying the information and giving incomplete information earlier. The facts are already mentioned in the main order. To recapitulate briefly, suffice it to say, that the Respondent No. 1 and Respondent No. 2 were the same individual at the relevant time as the Respondent No. 2 was holding additional charge as Commissioner, Corporation of City of Panaji. When the Respondent No. 1 failed to give the reply in time, the Appellant approached the Respondent No. 2. Instead of disposing the appeal for want of jurisdiction, he himself being the Public Information Officer, he has issued notice for personal hearing two times but neither heard the Appellant nor passed any order. On the contrary, on the date fixed for hearing in the Directorate of Municipal Administration as Appellate Authority, the Appellant was asked to approach the Municipal Engineer in the office of the Respondent No. 1. When the Appellant did so, he

...2/-

was directed to approach another person in the office. When the Appellant protested, some incomplete information was furnished to him by post, compelling him to file this second appeal to this Commission. The order was passed by this Commission on 3/1/2007 directing the Respondent No. 1 to furnish all the documents requested by the Appellant. The documents were furnished to him on 22/1/2007. Simultaneously, the Respondent No. 1 was asked to show cause why the penal action should not be initiated against him. Meanwhile, the Respondent No. 1 was relieved of the additional charge of Commissioner of Corporation of City of Panaji, thus retaining the charge of Director of Municipal Administration. Now, the post of Respondent No. 1 and 2 are held by two different persons. The present incumbent has filed his written reply to the show cause notice.

2. Arguing on behalf of the Respondent No. 1, the learned Adv. Mashelkar basically raised two points as to why no penalty proceedings can be initiated against the Respondent No. 1. He submitted that the documents requested by the Appellant were furnished in Writ Petition No. 333/1993. Obtaining the copies and giving to the Appellant has caused the delay. He has also submitted that the matter is sub-judice in High Court. Secondly, the action of Respondent No. 1 in giving incomplete information/delay in giving complete information has to be taken in "good faith". He was not negligent in work nor malafides can be attributed to him. He relied on a case of Municipality of Bhiwandi and Nizampur Vs. M/s. Kailash Sizing Works reported at AIR 1975 SC 529 to say that negligence does not imply malafides and expression "done in good faith" is defined in the Bombay General Clauses Act, 1904 and the General Clauses Act, 1897 to mean "done honestly", even if it is done negligently.

3. As we have seen from a copy of Writ Petition No. 333/1993 produced by the Respondent No. 1, that the relief claimed in the Writ Petition No. 333/1993 is about the alleged illegal construction by the Mariot Hotel, Panaji earlier known as M/s. Palm Hotels Limited. The Respondent No. 1 is one of the Respondents in the Writ Petition. On the other hand, the Appellant herein asked for certain documents from the record of the Municipal Corporation of Panaji. We are, therefore, at a loss to understand what is sub-judice about the present case. Even, if it is the case of the Respondent No. 1 that the documents were submitted to the Hon'ble High Court of Judicature at Bombay, Goa Bench at Panaji in the above Writ Petition, it does not amount to "sub-judice" to give the copies of the documents requested by the Appellant herein as no such prohibitory order was

issued by the Hon'ble High Court. In fact, after the pronouncement of its order by this Commission, the same documents were indeed obtained from wherever they were kept and copies were given to the Appellant, which could have been done earlier also. Besides, there is no definite statement by the Respondent No. 1 or his Advocate that the original documents were submitted by the Respondent No. 1 to the Hon'ble High Court.

4. The meaning of "good faith" relied by the learned Advocate in the Bhiwandi Municipality case also is not of much help to him. This is simply because in the present case, the grievance is that no action was taken by the Respondent No. 1 to furnish the documents in the given statutory time period. The allegation is not about any wrong action, negligent action or reckless action. Further, the RTI Act itself puts the burden of proving that the Respondent No. 1 did not furnish knowingly incomplete or misleading information to the Appellant is placed on the Respondent himself and not the Appellant under Section 20, second proviso of the RTI Act. No doubt, the Act protects the Public Information Officer of the action taken by him in good faith under Section 21 thereof. This means that if a Public Information Officer has given any information, though it is exempted under Section 8 or 9 of the Act, or is prohibited under any other Act like the Official Secrets Act, Indian Evidence Act or any departmental provisions, no action can be taken against him for having given the information. It does not protect the Public Information Officer if he does not give the information or delays the information or destroys or otherwise obstructs the disclosure of information. In any case, the Respondent No. 1 cannot take shelter under any provision of the Act to escape the penalty. The imposition of penalty under Section 20 is at the discretion of the Commission. In view of the circumstances of this case, we are not inclined to proceed further and drop the proceedings of penalty against the Respondent No. 1 not because of his pleadings before us but with the hope that the Respondent No. 1 will take due care in attending to the requests for information under the RTI Act in future. The order is to be communicated to the Respondent No. 1.

(A. Venkataratnam)
State Chief Information Commissioner, GOA.

(G.G. Kambli)
State Information Commissioner, GOA.