

GOA STATE INFORMATION COMMISSION

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

Complaint No. 31/2006/ADT(S).

Edwin Martins
H. No. 1045, Bamado,
Chinchinim, Salcete - Goa.

..... Complainant.

V/s.

Shri Manuel Afonso
Asst. Director of Transport,
Margao - Goa &
Public Information Officer.

..... Opponent.

CORAM :

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

(Per A. Venkataratnam)

Dated : 26/10/2006.

Complainant in person.

Opponent also in person.

ORDER

The complainant has made 2 requests both dated 2/6/2006, both of them to Director of Transport who is the Member Secretary (STA). They have been forwarded by the Asst. Director of Transport, Headquarter, Panaji to the Asst. Director of Transport, Margao who is the Public Information Officer, on 6/6/2006. The PIO by his letter dated 22/6/2006 informed the complainant to submit his application in Annexure A under Rule 3 of the Right to Information Act, 2005 accompanied by application fee of Rs.10/-. Thereafter, when the complainant called on the Asst. Director of Transport (S) to clarify that there is no requirement of any application in a prescribed format and in any case to give a copy of the format if there is any, the PIO insisted that it is to be in prescribed form and refused to give the information. The complainant, thereafter, filed this complaint on 1/9/2006 swearing an Affidavit stating the above factual position mentioned in the complaint and requesting this Commission to impose a penalty of Rs.250/- per day on the PIO for refusing information to him.

...2/-

2. Notices were issued to both the parties and both appeared in person. The PIO was directed on 4/10/2006 to file an Affidavit in reply and particularly as to why the prayer contained in para no. 5 of the complainant's Affidavit dealing with the imposition of penalty should not be granted. On subsequent day of hearing, i.e. 19th October, 2006, the PIO submitted a written reply, which is not in the form of Affidavit stating therein that the application for the information is not in proper format as per Annexure A under Rule 3 of the RTI Act. At the same time, he has also mentioned at para 5 thereof that the said format is not prescribed under the RTI Act but "it meets with salient features of the information required to be complied with to facilitate supply of information requested by the Complainant". This is so much of hogwash and we do not understand what the PIO means by this statement. He has raised further the question of jurisdiction of this Commission to entertain this complaint without exhausting remedy of the first appeal available to him under the RTI Act. He has mentioned that the fee was not paid and hence request was rejected. He did not show cause as to why the penalty should not be imposed on him though an opportunity was given to him by the Commission's order dated 4/10/2006 in the Roznama and 45 days have passed by.

3. The complainant insisted that he is entitled for the information in whatever form, he chooses to ask for the information and as there is no bar to file a complaint even if no first appeal has been filed, the information should be provided to him and the PIO should be penalized for refusing the information.

4. We have gone through the application for information as well as the written replies of both the parties and considered their oral arguments. It is true that the complainant has not exhausted the first appeal under Section 19 (1) before filing this complaint against the deemed refusal of information by the PIO. However, the provisions of Section 18(1)(a) are very clear conferring the discretion on this Commission to receive and inquire into a complaint from any person if the PIO refused to accept his application or refused access to any information. It is true that in the normal course, the Appellate provisions have to be exhausted but the Commission considers that this is a fit case to entertain the complaint against the PIO. We have not only seen that the PIO is aware that it is not mandatory for citizen to apply in prescribed format for information but also the rule quoted by him does not prescribe any format. We do not also buy his

argument that an application form is required for better appreciation of request. It is actually the other way. If the information requested is not clear to the PIO, he should assist the complainant in reducing the request into writing by providing reasonable assistance to put it in writing under Section 6 (1) (b) proviso. Further, we have seen from the request for information there is nothing ambiguous about it. It is a specific request about the timing of KTC buses on particular route, namely, from Panaji to Margao and vice versa and there is therefore, no reason for denying the information or refusing to accept the fee for the information. The complainant has sworn an Affidavit saying that he wanted to deposit the sum of Rs.10/- for the application fee but it is the PIO who has refused to accept the amount. This statement has not been denied by PIO. Though, the PIO has denied the complainant has met him in connection with the requested information, he has not said so on sworn Affidavit inspite of clear directions by this Commission on 4/10/2006. Besides, the PIO has raised a point of exemption of fees for persons below poverty line. The complainant's case is not about the exemption from payment of fees but refusal to accept the fees by the PIO.

5. It is worth mentioning that admittedly, the opponent has asked the Complainant to submit the application in the format Annexure A under Rule 3 of the RTI Act alongwith application fee of Rs.10/- as prescribed under the Government notification. Being so, the opponent was well aware of the Government notification prescribing the fees payable alongwith application seeking information. It is not understood as to where from the opponent has brought this format in Annexure A. The opponent has neither provide this format in Annexure A to the Complainant nor shown to this Commission. During the arguments, the opponent was specifically asked to cite the provisions of Rules under which the application format in Annexure A is prescribed. The opponent was unable to satisfy this Commission. In spite of knowing fully well that there is no format prescribed under the Rules framed by the Goa Government under the RTI Act, 2005, the opponent had deliberately and intentionally asked the Complainant to apply in the prescribed format Annexure A. The Complainant has alleged in the complaint that the opponent has refused to accept the fees, on the pretext that application has to be done in the form in Annexure A. This has not been denied by the opponent. The Complainant has sworn an Affidavit to that effect, which has not been denied by the opponent.

Therefore, the Commission has to believe the Complainant that the opponent has refused to accept the application and the application fee of Rs.10/- on the ground that the application was not in the prescribed format (Annexure A). The opponent has made a misleading statement in their reply and also the opponent was misleading the Complainant by asking him to make an application in the prescribed format at Annexure A when such a format is not at all prescribed in the Rules. To our mind, this is nothing but to harass the Complainant and intentionally and malafidely withhold the disclosure of the information sought by the Complainant.

6. We are of the considered opinion that the PIO has avoided responsibility to furnish the information inspite of repeated efforts by the complainant and that he failed to show cause why penalty should not be imposed on him for refusing the information and thereby causing a delay. We are also of the opinion that the complainant is unnecessarily subjected to mental agony in trying to get the information and this is a fit case for compensating him for the loss/detriment suffered by him.

7. We, therefore, direct the Public Authority, viz, Director of Transport to pay a compensation of Rs.1000/- to the complainant under Section 19(8)(b). Also by the virtue of the powers vested in the Commission under Section 19(8) (c) read with section 20(1), we direct Rs.2500/- be paid by the PIO as penalty for deliberately refusing/parting with the information which was in his possession. The penalty should be recovered in one instalment from his salary of November, 2006 by the Director of accounts. A copy of this order should be sent to the Jt. Director of Accounts (South), Margao for execution and recovery of the penalty from the opponent.

Pronounced in the open Court on 26th day of October, 2006.

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

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