

GOA INFORMATION COMMISSION

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

Penalty Case No. 03/2008 in
Appeal No. 23/SIC/2008

Mr. Dinesh Vaghela,
2nd Floor, Navagauri Apt.,
Opp. ICICI ATM,
Alto Porvorim, Bardez – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Block Development Officer,
Mapusa, Bardez – Goa.
2. First Appellate Authority,
The Deputy Director of Panchayats,
North Goa, Panaji – Goa.

..... Respondents.

CORAM:

Shri G. G. Kambli
State Information Commissioner

(Per G. G. Kambli)

Dated: 11/09/2008.

JUDGMENT

The penalty proceedings were initiated against the Respondent No.1 vide judgment and order dated 11/07/2008 passed in Appeal No.23/SIC/2008 directing the Respondent No. 1 to show cause as to why the penalty of Rs.250/- per day delay should not be imposed on him under section 20 of the Right to Information Act, 2005 (for short the Act) for causing the delay of 39 days in providing the information to the Appellant. The Respondent No. 1 was also directed to file detailed steps taken by him from the date of the receipt of the application till its disposal. In the said judgment, the Respondent No. 1 was directed to be more careful in making statement before the Commission making allegations against the citizens without substantiating the same and without proper justification and evidence. The facts of the case have been discussed in the said judgment and order and the said facts be treated as part and parcel of this judgment as if incorporated herein in order to avoid repetition.

2. In response to the said order dated 11/07/2008, the Respondent No. 1 filed the written statement on 25/07/2008 and further additional statement on 11/08/2008. In the earlier statement dated 25/07/2008, the

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Respondent No. 1 submitted that the delay has been caused due to workload and understaff of his office. In the said statement, he stated that the application of the Appellant dated 14/11/2007 was marked to Head Clerk, Smt. Deepa Banaulikar who transferred the said application to the Extension Officer VP-I Shri. S. V. Naik on 29/11/2007. According to the Respondent No. 1, Shri. S. V. Naik remained silent on the said application. The Respondent No. 1 further stated in the said reply as follows: -

“That the appellant/applicant had filed the said application dated 14/11/2007 in this office and also remained silent, did not turned to this office for any persuasion and reminders

The Respondent No. 1 also made further statement as follows: -

“That, though the information was kept ready as per application, the appellant did not turned to this office for any enquiry or to collect the information.”

In his further reply, the Respondent No. 1 made following statement: -

“However the said Shri. S. V. Naik, EOVP-I taken over the said application from the Head Clerk and remained silent and did not take initiative to dispose the same in time and brought the same on my table alongwith the draft. On 21/01/2008 and the same was disposed on the same day on 21/01/2008.”

3. By an interim order dated 18/08/2008, Smt. Deepa Banaulikar, Head Clerk and Shri. S. V. Naik, EO VP-I were directed to show cause as to why they should not be treated as Public Information Officers for causing delay of 39 days in providing the information thereby contravening provisions of section 7 of the Act. Both of them have filed their replies. Smt. Deepa Banaulikar, Head Clerk submitted that she was on leave from 22/10/2007 to 21/11/2007 and therefore, she was not on duty when the application dated 14/11/2007 was received in the office. She submitted that on joining the duties on 22/11/2007 she started clearing the backlog and when she noticed that the application dated

14/11/2007 filed under the Act is pending, she immediately transferred the same to Shri. S. V. Naik on 29/11/2007. She, therefore, prayed that the proceedings against her be dropped.

4. Shri. S. V. Naik, EO VP-I in his reply submitted that he received the application dated 14/11/2007 of the Appellant on 29/11/2007. However, the relevant file of the Appellant was not available with him and it was/is not in his possession. He further submitted that the matter of the Appellant is before Respondent No. 1 since very long time and the said matter was being dealt with by the Extension Officer, Shri. G. V. Gaonkar. Shri. Naik further submitted that though the matters pertaining to the Village Panchayat of Pilerne is handled by him, the file of particular matter of the Appellant was not transferred to him since he joined the duty in the office of the Block Development Officer as an Extension Officer from 29/12/2006. He, therefore, stated that he was totally unaware of the facts of the case of the Appellant. However, on the direction of the Respondent No. 1, he obtained the file from one Kiran Naik, LDC (PETS) and on going through the file and in consultation with the Respondent No. 1 and kept ready and informed to the Appellant vide letter dated 21/01/2008.

5. It will be seen from the above that the application dated 14/11/2007 of the Appellant was dealt with in a routine manner like other administrative matters. The Respondent No. 1 being the Public Information Officer ought to have dealt with the application directly instead of marking the said application to the Head Clerk or Extension Officer. The Respondent No. 1 should note that while deciding the applications under the Act, the Respondent No. 1 acts in quasi-judicial capacity and he is not expected to take advise either from superiors or from subordinates while deciding these applications except clerical assistance because the decisions of the Respondent No. 1 are appealable under the Act. Merely marking the application to the Head Clerk or Extension Officer does not absolve the Respondent No. 1 from his responsibility as Public Information Officer more so because he is also head of office. The Respondent No. 1 has failed to produce before me any evidence to show that he has taken any steps to dispose off the said application after it is filed on 14/11/2007 till the filing of the first appeal by the Appellant. The Respondent No. 1 has awoken only after filing the first

Appeal by the Appellant thereby ignoring the mandatory provisions of section 7 of the Act.

6. It is very interesting to note that the Respondent No. 1 in his reply stated that the Appellant had filed the application dated 14/11/2007 and also remained silent, did not turned up to his office for any persuasion and reminders. The Act casts an obligation on the Public Information Officer to provide the information to the information seekers within the specified time limit. He cannot expect the citizen to visit his office again and again and to send the reminders. In fact, it is the duty of the Public Information Officer to comply with the mandatory statutory provisions of section 7 of the Act. The Respondent No. 1 has miserably failed to observe the provision of section 7 of the Act and also not give the justification for the same. In terms of provisions of sub-section (5) of section 19 of the Act, the burden is on the Public Information Officer to prove that the denial of the request is justified. In the present case, the Respondent No. 1 did not communicate his decision within the time limit specified in section 7 of the Act and therefore, the request of the Appellant deemed to have been refused. Hence, the burden solely lies on the Respondent No. 1 to prove that he has acted diligently as per the provisions of section 7 of the Act. The Public Information Officer cannot blame the citizen for not reminding the Public Information Officer.

7. The Respondent No. 1 in his reply also stated that the information was kept ready as per the application but the Appellant did not turn up to his office for any enquiry or to collect the information. Similar statement was made by the Respondent No. 1 during the hearing of appeal stating that the intimation was sent to the Appellant to collect the information which was kept ready. The said statement was subsequently withdrawn by the Respondent No. 1 when the Respondent No. 1 was directed to produce the proof of having sent the intimation to the Appellant that the information was kept ready stating that such intimation was sent in other case. The Respondent No. 1 had also made an allegation against the Appellant in his reply dated 5/6/2008 that the Appellant is a habitual Complainant against the Government authority without any valid ground. This allegation was also subsequently withdrawn by the Respondent No.1.

8. While replying to the show cause notice, the Respondent No. 1 also

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made contradictory and false statement in his first reply. The Respondent No. 1 stated that the information sought by the Appellant was kept ready but the Appellant did not turn up for any enquiry or collect the information. In the subsequent reply, the Respondent No. 1 makes the contradictory and false statement stating that Shri. S. V. Naik, EO VP-I remained silent and did not take up initiative to dispose off the same in time and brought the same on his table alongwith the draft on 21/01/2008 and the same was disposed off on the same day i.e. on 21/01/2008. This clearly indicates that the information was not kept ready but it was kept ready only on 21/01/2008 as per the own statement of the Respondent No. 1. I also fails to understand as to how Shri. S. V. Naik, EO VP-I can take initiative to dispose off the application of the Appellant when it is the duty of the Public Information Officer to dispose off the application of the applicant within the time limit laid down in the Act. The Respondent No. 1 also stated that Shri. S. V. Naik, EO VP-I has brought the draft which clearly shows that the reply to the application dated 14/11/2007 of the Appellant was prepared by Shri. S. V. Naik, EO VP-I and therefore, there is absolutely no application of mind by the Respondent No. 1 as Public Information Officer. In fact, as stated earlier, the decisions on the applications under the Act are required to be taken by the Public Information Officer and not by his subordinates. Here again, the Respondent No. 1 has failed in his duties as a Public Information Officer in taking independent decision on the application dated 14/11/2007 of the Appellant.

9. It is also pertinent to note that the information sought by the Appellant vide his application dated 14/11/2007 was not old but it was within the knowledge of the Respondent No. 1. Shri. S. V. Naik has clearly stated that the relevant file was not given to him though he is dealing with the matters pertaining to the Village Panchayat Pilerne. This also clearly shows that the matter of the Appellant was dealt with by the Block Development Officer and not entrusted to Shri. S. V. Naik, EO VP-I. I fail to understand as to why the Respondent No. 1 made an exception in this matter when other matters are dealt with by Shri. S. V. Naik, EO VP-I. The explanation given by the Respondent No. 1 that his office is overburden with work and there is inadequate staff cannot be accepted in view of the mandatory statutory provisions of the Act which are to be complied with by the Public Information Officer. It is true that the Bardez Block is a very

big block having about 33 Panchayats but the Respondent No. 1 has suppressed the fact that this block has two Block Development Officers. The learned Advocate for the Appellant submitted that the information sought by the Appellant was within the knowledge of the Respondent No.1 as he was handling the same personally. This fact is also confirmed by Shri. S. V. Naik, EO VP – I. The Appellant has also alleged during the course of hearing that Respondent No. 1 was seized of the matter personally as the Respondent No. 1 inspected the site with a private taxi.

10. The learned Advocate for the Appellant also submitted that the Respondent No. 1 did not send any intimation to the Appellant in the other case and therefore, the Respondent No. 1 is trying to mislead this Hon'ble Commission. The Respondent No. 1 has also not produced any documents in support of the statement that he has sent an intimation to the Appellant in other case. The learned Advocate for the Appellant also contended that the Respondent No. 1 has unnecessarily implicated his subordinates in order to absolve himself from the responsibility as Public Information Officer. He also pointed out that it is the Respondent No. 1 who was dealing with the subject matter and personally aware of the same and therefore, he should be held responsible for causing inordinate and unexplained delay. He also submitted that the Respondent No. 1 has deliberately and intentionally caused the delay in order to harass Appellant and prayed that the heavy penalty be imposed on the Respondent No. 1.

11. The above discussions will clearly show that the Respondent No. 1 has not acted diligently and has made contradictory statement in his replies. At one stage, the Respondent No. 1 states that the information was kept ready and on the other hand, the Respondent No. 1 stated that Shri. S. V. Naik, EO VP-I remained silent on the application of the Appellant and put up the same to him only on 21/01/2008 on which date the information was sent to the Appellant. This clearly indicates that the information was not kept ready. In fact, the Appellant stated that he visited the office of the Respondent No. 1 on number of occasions but he has not been provided the information. Except for administrative reason, the Respondent No. 1 has not explained the delay. He has totally ignored the provisions of section 7(1) of the Act. The Respondent No. 1 being the Public Information Officer is responsible for the delay and he cannot shift

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his responsibility to his subordinates. There is no application of mind by the Respondent No. 1 while dealing with the application of the Appellant as the draft reply was prepared by the Extension Officer VP-I. Thus, the Respondent No. 1 has not discharged his responsibility and duties as a Public Information Officer under the Act and therefore, he is liable for action under section 20 of the Act.

12. In these circumstances, I pass the following order: -

ORDER

The Respondent No. 1 is responsible in causing the delay of 39 days in providing the information to the Appellant which has not been justified by the Respondent No. 1. The total penalty at the rate of Rs.250/- per day comes to Rs.9750/-. However, I take a lenient view and impose a penalty of Rs.2000/- on Shri. Shivprasad Naik, Block Development Officer, Bardez, Respondent No. 1 herein with a warning that he should be careful while disposing the applications received under the Act. He shall pay the penalty on or before 30/09/2008 failing which it should be recovered from his salary for the month of October, 2008. The Director of Accounts is authorized to deduct the penalty of Rs.2000/- from the salary of the Respondent No. 1, Shri. Shivprasad Naik from the month of October, 2008 in the event the Respondent No. 1 fails to pay the penalty. The proceedings against Smt. Deepa Banaulikar, Head Clerk and Shri. S. V. Naik, EO VP-I are hereby dropped.

Pronounced in the open court on this 11th day of September, 2008.

Sd/-
(G. G. Kambli)
State Information Commissioner