

GOA INFORMATION COMMISSION
Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Penalty case No. 28/2006
in
Appeal No: 72/2006.

Joao J. Caldeira,
La Campala Colony,
Miramar, Goa – 403001.

....

Appellant.

V/s

1. First Appellate Authority,
Principal Chief Engineer,
PWD, Altinho, Panaji – Goa.

....

Respondent No. 1

2. The Assistant Public Information Officer,
Dy. Director of Administration,
PWD, Panaji – Goa.

....

Respondent No. 2

3. The Public Information Officer
Superintending Surveyor of works,
PWD, Altinho, Panaji – Goa.

....

Respondent No. 3

CORAM:

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

(Per G.G. Kambli)

Dated: 27/6/2007.

Respondents No. 2 and 3 in person.

J U D G M E N T

By order dated 30/3/2007 passed in Appeal No. 72/2006, this Commission directed the Respondent Nos. 2 and 3 to show cause as to why the penalty of Rs. 250/- per day delay should not be imposed on them for malafidely withholding the disclosure of the information to the Appellant.

2. The Respondent No. 2 filed the reply dated 18/4/2007. The Respondent No. 3 also filed his reply dated 3/5/2007 and the reply dated 30/5/2007.

3. The detailed facts of the case have been discussed in the order dated

...2/-

30/3/2007 and therefore the said order may be treated as a part and parcel of this judgment and order to avoid repetition. However, we are confining to the facts, which are relevant for deciding the present penalty proceedings.

4. The Appellant sought the information under the Right to Information Act, 2005 (herein after referred to as an Act) in respect of filling up of 33 vacancies of Junior Engineer pursuant to the advertisement published in the Navhind Times newspaper on 23/11/2005 from the Respondent No. 3 vide application dated 16/11/2006 along with Rs. 10/- in cash, which was received by the Respondent No. 3 on 17/11/2006 but the office of the Respondent No. 3 refuse to issue proper receipt for Rs. 10/-.

5. One Alka Hede, (designation not mentioned) for and on behalf of the Respondent No. 3, transferred the said application to the Respondent No. 2 under section 6 (3) of the Act stating that the Respondent No. 2 has to furnish the information directly to the Appellant after collecting Rs. 10/- and cost of photocopies at the rate of Rs. 2/- per page. The said Alka Hede also informed the Respondent No. 2 to intimate the action taken to her vide letter dated 20/11/2006 with a copy to the appellant with a request to inform the office of the Respondent No. 3 incase of any difficulty. As the Appellant did not receive the information, the Appellant sent the reminder dated 14/12/2006 bringing out to the notices of the Respondent No.3 that the information has to be furnished latest by 17/12/2006 in terms of section 7 (1) of the Act. The Appellant also invited the attention of the Respondent No. 3 to the provision of section 6 (3) of the Act and stated that the application under section 6 (3) of the Act can be transferred to the other Public Authority and stated that the Respondent No. 2 is not the Public Authority as defined in section 2 (h) of the Act. The Appellant, therefore, requested the Respondent No. 3 to supply the information to the Appellant latest by 17/12/2006 failing which the appellant would approach the Appellate Authority. In spite of having brought the relevant provisions of section 6 (3) and section 2 (h) of the Act, the Respondent No. 3 informed the Appellant vide letter dated 18/12/2006 that the Respondent No. 2 will be treated as PIO in terms of section 5 (5) of the Act and further stated that incase the Appellant files any appeal, Respondent No. 2 will be the Respondent. As

regards the definition of Public Authority. The Respondent No. 3 did not agree with the contention that the Respondent No. 2 is not the Public Authority.

6. The Appellant thereafter preferred the appeal on 20/12/2006 before the Respondent No. 1 as his request for information is deemed to have been refused in terms of sub section (2) of section 7 of the Act. Interestingly, the Respondent No. 2 vide letter dated 10/1/2007 informed the Appellant that his application dated 20/12/2006 is rejected as the same does not fulfill the requirement of section 6 of the Act. The Appellant therefore filed the 2nd appeal before this Commission on 17/1/2007 being Appeal No. 72/2006. Subsequently, the Respondent No. 3 passed an order on 30/1/2007 in appeal No. 6/2007, stating that the Respondent No. 2 ought to have provided the information to the Appellant since the Respondent No. 2 was designated as PIO w.e.f. 22/12/2006. The Respondent No. 3 held that the Respondent No. 2 kept the matter pending for more than 1 month and transferred the said appeal to the Respondent No. 3 only on 29/1/2007 and directed the Respondent No. 2 to furnish the information to the Appellant without charging any fees. The Respondent No. 3 also held that the Respondent No. 2 has not handled the matter in the line with the words or spirit of the Act. However, the Respondent No. 2 did not furnish the information to the Appellant.

7. Upon issuing the notices of the Appeal, the Respondent No. 2 filed the written reply stating that by virtue of Government notification dated 22/12/2006, the Respondent No. 2 became the PIO and the Respondent No. 3 as 1st Appellate Authority. It was further stated in the reply that as per the order dated 30/1/2007, the Appellant was directed to collect the information vide letter dated 27/2/2007. The Respondent No. 2 did not make any reference to the various allegations and the points raised by the Appellant in the memo of appeal. Similarly, no comments are offered on the letter dated 10/1/2007 of the Respondent No. 2 rejecting the Appeal dated 20/12/2006. This letter has been issued by the Respondent No. 2 during the course of the pendency of 1st appeal.

8. Admittedly, the Application dated 16/11/2006 was received by the

Respondent No. 3 on 17/11/2006, which was transferred by one Smt. Alka Hede to the Respondent No. 2 under section 6 (3) of the Act. The Respondent No. 2 did not act on the application of the Appellant. The Respondent No. 3 in his reply in para 7 has stated that the Respondent No. 2 has sent the said appeal to the Respondent No. 3 on 29/1/2007 after the expiry of 30 days without disclosing the fact that the Respondent No. 2 has already issued the letter to the Appellant rejecting to give the information. In Para 6 of the reply, the Respondent No. 3 has also stated that the Respondent No. 1 in the capacity as Head of the Department marked the said appeal to the Respondent No. 3 apparently with the expectation that the Respondent No. 2 will furnish the information to the Appellant.

9. The application of the Appellant was received in the Office of the Respondent No. 3 on 17/11/2006 and therefore the decision on this application ought to have been communicated to the Appellant on or before 17/12/2006 as per sub-section (1) of section 7 of the Act. Neither the Respondent No. 2 nor the Respondent No. 3 provided or rejected the information to the Appellant within the specified period of 30 days. The application of the Appellant was transferred to the Respondent No. 2 under letter dated 20/11/2006 and therefore the Respondent No. 2 ought to have provided the information to the Appellant or at least submitted the information to the Respondent No. 3 on or before 20/12/2006. The Respondent No. 2 remained silent and did not act on the application of the Appellant and therefore the Respondent No. 2 has not acted diligently. The Appeal which was filed before the Respondent No. 1 also kept pending by the Respondent No. 2 and rejected the said appeal vide letter dated 10/1/2007 by assuming the powers of the 1st Appellate Authority which was not vested in the Respondent No. 2. Therefore the Respondent No. 2 has misused, abused and exercised the powers, which was not vested in her under the Act. The letter dated 10/1/2007 is also very vague and not supported by any valid reasons or grounds. It is not understood what was the requirements of section 6 of the Act, which was not fulfilled by the Appellant in the Appeal filed before the 1st Appellate Authority.

10. The Commission by its order dated 28/2/2007 has directed the Respondent No. 2 to provide the information on all the points to the

Appellant on 28/2/2007 itself and file the compliance report on 5/3/2007. On 5/3/2007 the Appellant made the grievances that he has not been provided with complete information and the Respondent No. 2 agreed to provide whatever left out information and therefore the Appellant was directed to provide the details of the information which is not received by the Appellant and the Respondent No. 2 was directed to file the compliance report on 14/3/2007. On 14/3/2007 the Respondent No. 2 remained absent and the Appellant again brought to the notice of this Commission that the Respondent No. 2 inspite of the direction from the Commission did not provide the information to the Appellant even though the Appellant provided the details of the information which was not provided to the Appellant vide letter dated 5/3/2007 the Appellant therefore prayed that the penalty be imposed on the PIO and the Appellant be adequately compensated.

11. Thus, it will be seen that the application dated 16/11/2006 was forwarded to the Respondent No. 2 by the Office of the Respondent No. 3 vide letter dated 20/11/2006. From 20/11/2006, the Respondent No. 2 did not take any action on the said application and on the contrary rejected the appeal dated 20/12/2006 vide letter dated 10/1/2007. The Respondent No. 2 did not provide the complete information to the Appellant till 14/3/2007 inspite of the direction from this Commission. Even on 14/3/2007 the Respondent No. 2 remained absent. So, there has been a delay of 84 days (till 14/3/2007) even after excluding 30 days period as available under section 7 (1) of the Act.

12. The Respondent No. 2 therefore did not act diligently and deliberately with malafied intention did not provide the complete and correct information to the Appellant. The Appellant has sought the information regarding filling up of 33 vacancies of Junior Engineer in the department. The Respondent No. 2 has not explained the delay and tried to avoid in providing the information to the Appellant thereby to frustrate the Appellant for the reasons best known to the Respondent No. 2. The Conduct of the Respondent No. 2 in dealing with the application of the Appellant as well as the appeal filed by the Appellant before the Respondent No. 1 was not at all satisfactory and it is detrimental and against the objective of the Act. The Respondent No. 2 has neither provided the complete information nor

explained the delay and therefore the Respondent No. 2 has to be dealt with very seriously as the Respondent No. 2 has acted in total contravention of the provisions of the Act. The Respondent No. 2 also does not deserve any leniency as Respondent No. 2 has failed to provide the complete information to the Appellant.

13. Section 20 of the Act contemplates that a penalty of Rs. 250/- per day delay can be imposed for not providing the information within 30 days and also for providing incomplete information. The Respondent No. 2 has not shown any sufficient cause for the delay and also not explained as to why the information was provided incomplete. This Commission is, therefore, fully satisfied that the Respondent No. 2 has deliberately and malafidely withheld the disclosure of the complete information sought by the Appellant with a view to frustrate the Appellant in perusing the matter of the recruitment for the post of Junior Engineer. Therefore, there is no hesitation for the Commission to impose penalty on the Respondent No. 2 namely Mrs. P. Arlekar, Dy. Director of Administration (PWD).

14. Coming now to the Respondent No. 3, the application of the applicant was received on 17/11/2006 which was transferred under section 6 (3) of the Act by one Alka Hede, for and on the behalf of the Respondent No. 3, to the Respondent No. 2. The Respondent No. 3 at the relevant time was the PIO and therefore the transfer of the application of the Appellant to the Respondent No. 2 by the Respondent No. 3 was illegal and in contravention of the provisions of the Act. The Appellant also sought clarification from the Respondent No. 3 vide his application dated 14/12/2006 regarding the said transfer. However, the Respondent No. 3 maintained his decision and stated that the Respondent No. 2 should be treated as PIO and if at all any appeal is preferred the Respondent No. 2 should be the Respondents. It is pertinent to note that the Respondent No. 3 did not seek any assistance from the Respondent No. 2 as required by sub section (4) of section 5 of the Act. The Respondent No. 3 did not even bother to inquire as to whether the information sought by the Appellant has been provided by the Respondent No. 2 even though while endorsing the copy of the letter 20/11/2006 to the Appellant the Office of the Respondent No. 3 has requested the Appellant "to inform that office in case of any difficulties" therefore it was the duty of

the Respondent No. 3 to ensure that the information sought by the Appellant was provided to the Appellant at least when the Appellant sent the reminder dated 14/12/2006. The Respondent No. 3 did not bother to make any further inquiries on issuing the letter dated 20/11/2006. Since, the information was available with the Respondent No. 2, the proper cause for the Respondent No. 3 was to seek assistance from the Respondent No. 2, in obtaining the information and not to transfer the application to the Respondent No. 2 under section 6 (3) of the Act.

15. The Respondent No. 2 in its written reply has submitted that as per the Government memorandum dated 22/12/2006 the Respondent No. 3 became the 1st Appellate Authority and the Respondent No. 2 became the PIO. The Respondent No. 3 in his reply stated that the Appellant sought the information vide letter dated 14/12/2006 which is not correct. Infact the Appellant sought the information vide application dated 16/11/2006 which was received in the office of the Respondent No. 3 on 17/11/2006 as it is evident from the order dated 30/1/2007 passed by the Respondent No. 3. On 17/11/2006, the Respondent No. 3 was the Public Information Officer and continued till 22/12/2006 when the memorandum was issued appointing the Respondent No. 3 as 1st Appellate Authority. Being so, the period of 30 days as laid down in sub section (1) of section 7 of the Act for determination of the application expires on 17/12/2006 during which period the Respondent No. 3 was the PIO. That apart, the memorandum dated 22/12/2006 has not been given retrospective effect and, therefore, the Respondent No. 3 ought to have disposed off the said application of the Appellant. Since the application was presented by the Appellant on 17/11/2006 and the 30 days period expired on 17/11/2006 during the tenure of Respondent No. 3 as PIO, The Respondent No. 3 cannot escape from the penalty provisions.

16. The Appellant preferred the 1st Appeal before the Respondent No. 1 on 20/12/2006 before issue of the Government memorandum dated 22/12/2006, the Respondent No. 1 ought to have decided the said appeal as the said memorandum was not given retrospective effect and the appeal was filed during the tenure of Respondent No. 1 as 1st Appellate Authority. The Respondent No. 3 has wrongly decided the said appeal, which was filed

before the Respondent No. 1 and rejected by the Respondent No. 2. The Respondent No. 3 while passing the order on 30-1-2007 did not hear the Appellant or the PIO i.e. Respondent No. 2 thereby violating the principles of natural justice. Had the Respondent No. 3 had given an opportunity of being heard to the Appellant or the Respondent No. 2, the matter would have been clear about the rejecting the Appeal by the Respondent No. 2.

17. Coming now to the plea of the Respondent No. 3 that as per the definition of the PIO contained in section 2 (m) of the Act, the PIO includes APIO. There is no doubt that the definition of PIO includes APIO. However, role of the APIO is very limited as per sub-section (2) of section 5 of the Act. The APIO has to receive the application for information or appeals and forward the same forthwith to the PIO or the Appellate Authority appointed under sub-section (1) of section 19 of the Act or the Commission. The Commission has also laid down the role of APIO in Appeals No. 9 and 10 decided on 19/10/2006 and hold that the APIO cannot decide the application on behalf of PIO or exercise the powers of PIO. The Central Government has designated the Post Offices as APIOs vide notification dated 6/10/2005 to facilitate the citizens to present their application in the Post Offices instead of sending them to the PIOs or the appeal to the 1st Appellate Authority or the Commission. The CPIOs cannot transfer the application under section 6(3) of the Act to the APIOs i.e. Post Offices for providing the information. It is also worth mentioning here that the PIO can seek the assistance of any other Officers as he/she consider it is necessary for the proper discharge of his/her duty. Therefore it is not necessary for the PIO to seek assistance under sub- section (4) of section 5 of the Act, from the APIOs only. The Assistance can be sought from any officer and not necessarily from the APIO.

18. Sub- section (3) of Section 5 of the Act reads as follows: -

“Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.”

It will be very clear from the above provision that it is the responsibility and obligation of the Public Information Officer to provide the information to the applicants. The Public Information Officer should act as facilitator and councilor for the information seeker. The aforesaid provisions also provide that the Public Information Officer shall render reasonable assistance to the persons seeking information. Further, proviso to clause (b) of sub-section (1) of Section 6 of the Act provides that the Public Information Officer shall render all reasonable assistance to the persons making the request orally to reduce the same in writing. Sub-section (1) of Section 7 of the Act casts a duty on the Public Information Officer either to provide the information or reject the request for any of the reasons specified in Section 8 and 9 of the Act, as expeditiously as possible and in any case within 30 days from the receipt of the request. Nowhere in the Act an obligation or duty is cast on the Asst. Public Information Officer to provide the information sought under the Act. The role of the Asst. Public Information Officer is restricted to receive applications or appeals meant for the Public Information Officers or the first Appellate Authority or the Commission and forward the same forthwith to the Public Information Officer or to the first Appellate Authority or the Commission as the case may be. A situation may arise where the Asst. Public Information Officer refuse to accept the application or causes a delay in forwarding the applications or appeals or did not forward the applications to the Public Information Officer or appeals to the first Appellate Authority or the Commission, in such eventualities, the Asst. Public Information Officer will fall within the definition of the Public Information Officer as defined in Section 2(m) of the Act because there is no provision in the Act whereby the penalty under Section 20 of the Act can be imposed on Asst. Public Information Officer for contravention of any of the provision of the Act. The definition of the Public Information Officer is, therefore, is to be read in that context and not otherwise.

19. The Act does not empower the Public Information Officer to delegate his powers to the Asst. Public Information Officer. The Public Information Officer has to take his own decision. In the present case, the Respondent No. 3 makes contradictory statement. At one stage, the Respondent No. 3 has transferred the application under Section 6(3) of the Act to the Asst.

Public Information Officer and on the other hand Respondent No. 3 states that the Asst. Public Information Officer i.e. Respondent No. 2 should be treated as Public Information Officer for the purposes of Section 5(5) of the Act. Sub-section (3) of Section 6 of the Act does not empower the Public Information Officer to transfer the application to the Asst. Public Information Officer. It provides for the transfer of the application by one Public Authority to another Public Authority which can be construed as one Public Information Officer to another Public Information Officer as the applications are made to the Public Information Officer and not to the Public Authorities. Admittedly, the Respondent No. 2 was the Asst. Public Information Officer and neither Public Authority nor Public Information Officer. It is also to be noted that while transferring the application, the Respondent No. 3 has requested the Respondent No. 2 as follows: -

“Please note that the action taken should be intimated to me”.

If the application is transferred under Section 6(3) of the Act which is by one authority to another authority, the authority transferring the application cannot ask the other authority to intimate the action taken report. The action taken report can be sought only from the subordinates.

20. As stated earlier, the assistance or information can be sought by the Public Information Officer from any officer where such information is available. It is not clear as to how the Respondent No. 3 has treated the Respondent No. 2 as a Public Information Officer for the purposes of Section 5(5) of the Act when no such assistance was sought by the Respondent No. 3.

21. In reply to the show cause notice, the Respondent No. 3 stated that it is the Respondent No. 2 who has not provided the information. The Respondent No. 3 has also stated that this Commission by its judgment and order dated 24/4/2007 passed in Appeal No. 89/2006 has held that there was no malafide in transferring the application by the Public Information Officer of the Electricity Department to the concerned Executive Engineer and therefore, the Respondent No. 3 submitted that the same principle should be applied to his case. Further, the Respondent No. 3 expressed that the Commission is bias towards him. In this context, it is to be noted that the facts and circumstances of the Appeal No. 89/2006 are totally different than

the present case. In the Appeal No. 89/2006, the Public Information Officer did not transfer the application under Section 6(3) of the Act but forwarded the same to the Executive Engineer, whereas in the present case, the Respondent No. 3 transferred the application under Section 6(3) of the Act as if the Respondent No. 2 is separate Public Information Officer or separate Public Authority. In the said case of Appeal No. 89/2006, the Public Information Officer pleaded that the application was the first application under the Act and the Public Information Officer was not imparted any training programme nor the Public Information Officer was qualified in law and the Public Information Officer acted in good faith. It is not the case of the Respondent No. 3, that he is not the law graduate and that the application dated 16/11/2006 of the Appellant was the first application received by the Respondent No. 3 under the Act. It is also not the case of the Respondent No. 3 that he has not undergone any training under the Act. In the case of the Electricity Department, Appellant therein did not bring to the notice of the Public Information Officer the provision of Section 6(3) or Section 5(5) of the Act. Infact, the Public Information Officer of the Electricity Department has just forwarded the application to the Executive Engineer without quoting any provision of the Act whereas in the present case, the specific provision of Section 6(3) of the Act were cited by the Respondent No. 3 in his letter dated 20/11/2006. Besides in a reply dated 18/12/2006, the Respondent No. 2 also referred the provision of Section 5(5) of the Act. Thus, the Respondent No. 3 has well read the provisions of the Act and was fully aware of the provisions of the Act. In spite of knowing the provision of the Act and the Appellant having brought to the notice of the Respondent No. 3 that the transfer under Section 6(3) of the Act was not proper, the Respondent No. 3 maintained his decision. This shows the malafide attitude of the Respondent No. 3. This being the position, the Respondent No. 3 cannot plead of bias when he has not acted in accordance with the provisions of the Act.

22. The Appellant made an application on 16/11/2006 which was received in the office of the Respondent No. 3 on 17/11/2006 and therefore, the Respondent No. 3 ought to have provided the information to the Appellant latest by 17th December, 2006. The Respondent No. 3 was reminded on 14th December, 2006 but did not act. Therefore, he is also responsible for the

delay for not providing the information to the Appellant. In the present case, the conduct, behaviour and attitude of the Respondent No. 3 and Respondent No.2 and in handling the matter is certainly not that of the officers who have been assigned the duties and responsibilities of the Public Information Officer's under the Act. In terms of Section 19(5) of the Act, the burden is on the Public Information Officer to justify the denial of the request. Both the Respondents No. 2 and 3 failed to discharge this burden.

22. The opportunity was given to the Respondent No. 3 to file his say and appear before this Commission on 30th May, 2007. The Respondent No. 3 appeared before this Commission on 30th May, 2007 and filed letter saying "I have nothing more to add, either verbally or in writing to my said written statement and to my said written communication in this matter". Thus, inspite of the opportunity given to the Respondent No. 3, the Respondent No. 3 did not explain or justify his actions in dealing with the present matter. Both the Respondents No. 3 and 2 also not deserve any leniency in the matter since instead of providing the information to the Appellant, they acted detrimental and as impediment in providing the information to the Appellant which is the right guaranteed under the Act.

23. The Respondent No. 1 remained silent throughout the appeal proceedings nor filed any reply. However, statement was made by the Respondent No. 3 that the Respondent No. 1 in the capacity of the Head of the Department had marked the appeal to the Respondent No. 2. As stated earlier there has been a delay of 84 days (as on 14/3/2007) even after the exclusion of 30 days. So, the penalty comes to Rs.21,000/-. However, the Commission restrict the penalty of Rs.10,000/- in respect of Smt. P. Arlekar and Rs.5,000/- in respect the Respondent No. 3, Shri A. Parulekar.

24. In view of what has been discussed above, we pass following order: -

ORDER

We hold that both the Respondents No. 2 and 3 are responsible for delay in providing the complete information to the Appellant within the time limit specified in sub-section (1) of the Section 7 of the Act. We, therefore, impose a penalty of Rs.10,000/- on the Respondent No. 2, Smt. P. Arlekar and Rs.5,000/- on the Respondent No. 3 Shri A. A. Parulekar. The penalty

imposed on Respondent No. 2 should be recovered in two monthly equal installments from the salary of Smt. P. Arlekar for the month of August and September, 2007. The penalty imposed on the Respondent No. 3 namely Shri A. A. Parulekar shall be recovered from the salary of August, 2007. The Director of Accounts, Panaji is directed to deduct the penalties from salary bills of these two officers. A copy of this judgment and order be forwarded to the Director of Accounts, Panaji.

Inform all the parties.

(G. G. Kambli)
State Information Commissioner

(A. Venkataratnam)
State Chief Information Commissioner