

GOA INFORMATION COMMISSION

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

Penalty Case No. 19/2006 in
Appeal No. 59/2006/Police

Shri Samiro Pereira
R/o H. No. 50,
Orlim Gontonaik Vaddo,
Salcete - Goa.

..... Appellant.

V/s.

1. Public Information Officer
The Superintendent of Police,
South Goa, Margao .
2. First Appellate Authority,
The Dy. Inspector General of Police,
Police Headquarters, Panaji - Goa.
3. Tony M. Fernandes
SDPO, Margao - Goa.
4. Dinraj Govenkar
Dy. Supdt. of Police, ANC,
Panaji - Goa.

..... Respondents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 14/06/2007.

ORDER

This disposes off a notice dated 23/2/2007 asking both the Respondents No. 3 and 4 to explain why penalty of Rs.250/- should not be imposed on both of them for failing to submit the information to the Respondent No. 1, Public Information Officer, in time. The facts of the case are already mentioned in the order-cum-notice dated 23/2/2007 in the main appeal No.59/2006/Police. Briefly stated, the Appellant in this case, submitted a request on 17/8/2006 to the S.P. (South). As the Public Information Officer did not give the information in time, he made the first appeal to the Dy. Inspector General of Police, Panaji who ordered that the information should be provided and compliance reported to him within 10 days of his order. However, the information was not supplied even after first Appellate Authority's order. The Appellant had to come to this

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Commission in second appeal to get the information and also to take penal action against the Respondent No. 1. Notices were issued to the Respondent No. 1, and the Dy. Inspector General of Police, Respondent No. 2. Respondent No. 1 stated that the information could not be given in time because the SDPOs namely Respondent No. 3 and 4 herein have not submitted to him the information. The Commission, therefore, considered that the Respondent No. 3 and 4 should be treated as the Public Information Officers for this case for applying the penal provision. Accordingly, show cause notices were issued to them.

2. Adv. Bhagat represented both the Respondents No. 3 and 4. The Appellant remained present alongwith his advocate on 20/03/2007 but did not file any vakalatnama, and submitted that Appellant is not interested in pursuing the matter. Thereupon both the Respondents No. 3 and 4 sought further time to file further reply to the show cause notice. The replies are now submitted on 30th May, 2007 which are considered now for disposal.

3. The Respondent No. 3, Tony Fernandes, contended in his statement that the request for information was passed on him for report on 20th August, 2006 and receive by him 21st August, 2006. Since then, he has been in correspondence with the P.I. Colva and sent as many as 4 reminders on 25/09, 10/10, 23/10 and 3/11/2006. Only on 20th November, 2006, P.I. Colva has submitted the information to the Respondent No. 3, which he passed on to the Respondent No. 1. Based on this report, Respondent No. 1 gave an interim reply on 18/12/2006 to the Appellant. Finally, on receiving further information from SDPO, Vasco, Respondent No. 4 herein, complete information was given by the Public Information Officer to the Appellant on 23/01/2007. Therefore, only defence of the SDPO, Margao is that his own subordinate has delayed the submission of information. We have already found in the main order, plea was taken by the Public Information Officer that he could not supply the information in time because it was not received from the SDPOs Respondents No. 3 and 4.

4. The same is the story in the case of Respondent No. 4 as well. In his case, however, the request for information was not sent immediately to him in August, 2006. In fact, it was sent to him on 04/01/2007, according to the reply now submitted by the Respondent No. 4 herein. As the information has to be further collected from the PSI, J. J. Dalvi who was working at Verna Police Station he had

called for the information from Verna Police Station. Finally, on 11/1/2007 he could get the information from Verna Police Station which was forwarded to Public Information Officer/S.P. South Goa, Respondent No. 1 herein. According to him, there was no delay on his side. The Commission accepts the statement by the Respondent No. 4, Dinaraj Govenkar as the information was not initially called from him soon, after the receipt of the information on 17th August, 2006. No blame, therefore, can be placed on Respondent No. 4. However, the same is not the case with the Respondent No. 3 because the reply by the Public Information Officer was delayed by more than 5 months.

5. It is not in dispute that there is a delay of 5 months in giving the reply to the Appellant. It is also not in dispute that he moved this Commission with his second appeal on 22/12/2006 and only after that there is some movement on the part of the Respondent No. 1 and Respondent No. 3 to attempt to give the some incomplete information on 23/1/2007. It is also not in doubt that the information is not available with any of the Respondents No. 1 to 4. They had to obtain, no doubt, from the Police Station concerned namely, Colva and Verna. It is also not in doubt that the Respondents have passed on various reminders and requests in a routine manner to the Police Stations where ultimately the information is available. However, the Commission is not in position to absolve them to furnish the information as expeditiously as possible and in any case not later than 30 days from the date of request as provided in the Section 7(1) of the Right to Information Act. The Commission cannot keep on investigating nor can it accept the pleas of the Respondents that their subordinates, and not they themselves are directly responsible for the delay in furnishing the information. Otherwise, there is no meaning in enacting a time frame for giving replies by the Public Information Officers to the citizens. We, therefore, hold both the Respondent No. 1 i.e. Public Information Officer and the Respondent No. 3 responsible together and jointly for the delay caused in providing the information. We are also not able to understand how and why the Public Information Officer did not seek part of the information from the Respondent No. 4 i.e. SDPO, Vasco directly in the month of August, 2006 itself when he sought the information from Respondent No. 3, SDPO, Margao.

6. The Appellant had also moved an application on 26/2/2007 stating that the Appellant is desirous to withdraw his appeal dated 22/12/2006 as he has

arrived at an amicable settlement between the parties and prayed to consider his appeal for the withdrawal. The said application was moved by the Appellant after the passing of the order by this Commission on 23/2/2007 and therefore, the said application became in fructuous. Section 20 of the Act, inter alia, contemplates that at the time of deciding any complaint or appeal if the Commission is of the opinion that the Public Information Officer has without any reasonable cause, not furnished the information within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information, or knowingly given incorrect, incomplete or misleading information, the Commission shall impose penalty of Rs.250/- each day till applicant receives the information provided that the total penalty shall not exceed Rs.25,000/-. Being so, the Commission can suo moto initiate penalty proceedings against the Public Information Officer and there is no need for a party to move separate application or make specific prayer for imposition of penalty or recommendation of disciplinary proceedings. Once the Commission forms its opinion to invoke the provisions of the Section 20 of the Act, the Appellant or the Complainant has no role in such penalty proceedings and even if the Complainant or the Appellant withdraws from the penalty proceedings it cannot affect the same. In the instant case, the Appellant had moved an application for the withdrawal of the appeal after the order was passed by the Commission and therefore, no cognizance can be taken of such application by the Commission. In all probability there might be some pressure on him to say so. There is no way of finding out one way or the other. However, a reading of the Act shows clearly that the appeal should continue even if the Appellant is absent. Rule 7 of the Goa State Information Commission (Appeal Procedure) Rules, 2006 states that (i) the Appellant may choose not to be present, or remain present in person or authorize his representative before the hearings of the Commission. We have found that he appeared in person till the order dated 23/2/2007 was issued by this Commission. We do not know how suddenly he engaged an Advocate just to submit that he is not interested in pursuing the penalty matter after the appeal is finally decided and the show cause notices were issued to the Respondents No. 1, 3 and 4. Apart from the fact that the second appeal before the Commission has to be heard even in the absence of the Appellant for the hearing, the show cause notice for levying penalty and the hearings regarding this matter are between the Commission and the Public Information Officer or "deemed" Public Information

Officer. We, therefore, find that his withdrawal from the matter of the penalty case, has no bearing on the penalty proceedings against the Respondents No. 1, 3 and 4. We, therefore, reject the oral submission by the Appellant that he is not interested in the penalty proceedings against the Respondents.

7. We are fully conscious of the delay which occurs in the day to day administration in any office. No doubt, the Public Information Officer has to make efforts to get the information from his colleagues/subordinates in Department however big the department is. It is the personal responsibility of the Public Information Officer to get information requested for by the citizen and to supply to him. We have, ourselves, come across a number of cases wherein information on number of points spanning a number of years was requested for by the citizens and was provided by the Public Information Officers though some times after the time period allowed under the Act. But nowhere we have found such an inordinate delay as in a present case and such a casual approach of entering into correspondence as in the present case of the Police Department. We have also got commented on this delay in our main order dated 23/2/2007 as to how the Police Department itself, which is a uniformed Department based on hierarchy and the subordinates did not submit the reply in time to their own superiors and how the Public Information Officer pleaded helplessness in the matter. If we accept this situation as beyond the control of both the Public Information Officer and the deemed Public Information Officer, we will be setting a wrong precedent in the matter of implementation of the RTI Act. We are, therefore, inclined to impose a penalty of Rs.5000/- each on the Public Information Officer i.e. Respondent No.1 and Shri Tony Fernandes, SDPO, Margao, Respondent No. 3 and direct the Joint Director of Accounts, South Branch, Margao to recover from the salary of both the officers this amount from the salaries for the month of June, 2007. The show cause notice against Shri Dinraj Govenkar, Respondent No. 4, is dropped. Copies may be sent to the Joint Director of Accounts, South Branch and to the parties.

(A. Venkataratnam)
State Chief Information Commissioner

(G. G. Kambli)
State Information Commissioner