



The State Information Commission, Kerala
Punnen Road, Thiruvananthapuram-695 039.

Tel:0471 2335199, Fax:0471 2330920
Email: sic@infokerala.org.in

Complaint No.351/2007/SIC
(File No.4173/G1/2007)

Shri.Sukumaran Vijayan
Dhanyasree,
Sreeekantasasthakshetram Road,
Vedivanchancoil,
Balaramapuram.



Petitioner

Vs

1. Public Information Officer,
Home (M) Department,
Govt. Secretariat,
Thiruvananthapuram.
2. Public Information Officer,
Police Headquarters,
Thiruvananthapuram.



Respondent

ORDER

Shri.Sukumaran Vijayan is the requester/ complainant in this case. On the 26th day of May, 2007 he had preferred a request before the Public Information Officer of Home Department, Govt. Secretariat, Trivandrum. The allegation in the request is as follows:-

His life and liberty had been under constant threat and imminent danger of death. His property had been encroached and the same was brought to the notice of the Home Department on 11.5.2007 to get the information within 48 hours. No satisfactory reply had been received and, therefore, he had moved the State Information Commission on 16.5.2007. A reply had been received from the Police Headquarters furnishing false and erroneous information. It was alleged

that the police did receive only the complaint addressed to the Hon. Chief Minister dated 23.6.2006. He had made ever so many requests and grievance petitions before the Chief Secretary, before the Home Secretary and also before the Director General of Police alleging threat to his life and also informing that his house had been set on fire. Therefore, he had requested for information regarding all these petitions within 48 hours. Carbon copy of this request dated 26.5.2007 was marked as Ext A1.

The requester had actually made a proper request under the RTI Act only on 11.5.2007 addressing the Public Information Officer of Home Department. It was to receive information again within 48 hours on the petitions given to the Chief Minister, Chief Secretary and Home Secretary. This request dated 11.5.2007 makes out that he had submitted three representations to the Hon. Chief Minister on 26.3.2007, 29.6.2006 and 23.2.2007. Two representations were submitted to the Chief Secretary on 14.2.2007 and on 19.3.2007 and finally a representation was given to the Home Secretary on 18.4.2007. Copy of this petition under Section 6 of RTI Act was marked as Ext A2.

The report of the Public Information Officer of the Home Department was called for. In the report dated 2.7.2007, it was reported that the petition was forwarded to the Director General of Police for enquiry and report. It was forwarded on 23.6.2006. Reminders were also issued. It was further reported that the Director General of Police in his report had informed the Home Department **that there was no threat to his life and property of the requester.** This remark dated 2.7.07 was marked as Ext A3. Copy of the petition addressed to the Chief Minister dated 23.6.2006 was masked as Ext A4.

The report of the State Public Information Officer, Police Headquarters addressed to the State Public Information Officer, Home Department dated 25.5.2007 would show that copy of the petition dated 11.5.2007 had not been transferred to the Public Information Officer of the Police Headquarters but copy of the petition dated 23.6.2006 addressed to the Chief Minister routed through the Director General of Police alone was received by the Public Information Officer. Consequently, an enquiry was ordered by the Superintendent of Police, Special Cell, and an interim report had been received. Again it was noticed that there was no threat to his life and liberty. This interim report of the Public Information Officer was marked as Ext A5. Accordingly, the Public Information Officer of the Home Department had informed the requester that there was no threat to his life or property and this reply addressed to him was dated 5.6.2007. It was marked as Ext A6.

In other words the Public Information Officer of Home Department managed to give a reply to the requester on 5.6.2007. That was after the lapse of 25 days. (See Ext A2 and A6).

The requester is not satisfied with this reply. Innumerable number of petitions were sent to the State Information Commission seeking ever so many remedies both civil and criminal and also requesting compensation. Detailed

affidavit of the Public Information Officer was called for. It was filed. The requester and the Public Information Officer were heard in person. The requester had also preferred written argument notes.

The following questions arise for consideration:-

1. What was the actual request preferred by the requester before the PIO of the Home Department?
2. Whether there was actual threat to the life and liberty of the requester as contemplated under Section 7(1) *proviso* of the RTI Act?
3. Whether information was furnished within 48 hours?
4. Did the request warrant immediate action within 48 hours?
5. What was the real dispute in which any information/remedy was sought? And, the relief, if any?

Issue No.1 & 2: From the facts and figures of this case, it could be seen that the requester had preferred two requests before the Public Information Officer of the Home Department. Those requests are Ext A1 and A2. The remedy expected was that he should get information with regard to any threat to his life or property. A reading of the *proviso* to Section 7(1) of the RTI Act is as follows:-

"Provided that where the information sought for concerns the life or liberty of a person the same shall be provided within 48 hours of the receipt of the request". 'A person' was the subject matter about whom the information had to be furnished. Whether the word 'a person' refers to a third party or the requester himself was a matter of debate. A plain reading of the *proviso* would make it clear that in matters of Human Rights violation, the information should have been furnished within 48 hours. Strangely enough, in this case no mention regarding any armed attack, any registration of a case, admission of the requester in a hospital due to an assault etc., were absolutely absent. What was the nature of the threat against his life and against his property were not mentioned in these requests. The request would show that three petitions addressed to the Chief Minister, two requests addressed to the Chief Secretary and one request addressed to the Home Secretary were pending and these matters require immediate attention and he wanted information on these petitions. The Public Information Officer of the Home Department transferred the request to the Public Information Officer of the Police Headquarters. Accordingly, a report was received as Ext A5 and Ext A6 was the reply signed by Mr.P.M.Somanathan addressed to the requester. In other words, within 30 days of the submission of Ext A2, a reply was furnished to him intimating him that there was no threat to his life and liberty. The mechanism was activated by forwarding the request from the Public Information Officer of the Home Department to the Public Information Officer of the Police Headquarters and the reply was given according to Ext A6. So, therefore, there was no delay in the normal course and no satisfactory circumstances were there to furnish the information within 48 hours.

Issue No:3,4 & 5: In this case, a detailed enquiry was conducted. Initially, the Public Information Officer of the Home Department was summoned. Thereafter, the Public Information Officer of the Police Headquarters was also summoned. Both sides were heard. The requester was heard twice in detail and was allowed to file a detailed argument note together with copies of documents. From the very outset, it could be seen that this was not an application in which information was sought. But the nature of the compliant is that of a grievance petition. The petitioner is trying to redress his grievance by setting the machinery of RTI Act on motion.

With regard to the third question, the Public Information Officer of the Home Department before whom the original request was preferred was heard. It was his duty to explain whether information was disseminated within 48 hours. Ext A6 was the reply given by the PIO of the Home Department. It was dated 5.6.2007. It was intimated that there was no imminent threat of death to his life. It was furnished on 5.6.2007 *ie.*, on the 25th day of submission of Ext A1 request. It was true that immediate action was taken by the Public Information Officer of the Home Department by forwarding the same to the Public Information Officer of the Police Department and that information was furnished on 14.5.2007 *ie.*, on the 3rd day of furnishing the request u/s.6 of RTI Act. Ext A7 is the intimation given to the requester that his request had been forwarded to the Public Information Officer of the Police Headquarters. Intimation Ext A7 was given by Smt.S.P.Ushakumari, the State Public Information Officer of Home Department. In short, a petition dated 11.5.2006 was answered on 14.5.2007 vide Ext A7 and for further action the same was forwarded to the concerned Public Information Officer of the Police Headquarters. There was hardly any delay in furnishing the information. At the time of hearing of this case, the Public Information Officer of the Home Department had appeared and this time the Public Information Officer was one Mr.M.Somasekharan. He had preferred a statement stating that an interim reply had been furnished to the requester. It was again asserted that there was neither a threat to his life nor any danger to his property. This statement filed by the Public Information Officer of the Home Department of the Govt. of Kerala was marked as Ext A8. The requester was entitled for an information within 48 hours as per the proviso to Section 7, if there existed an actual threat to the life and property. This matter was more closely connected with the functions of the Public Information Officer of Police Headquarters and that was why the same was transferred under intimation to the requester. The interim reply Ext A7 was within 3 days *ie.*, without unnecessary delay and Ext A8 had further clarified the position that the entire responsibility of conducting a detailed enquiry was handed over to the Police Department. The Public Information Officer of the Police Department was Mr.Y.Anilkumar.IPS, Inspector General of Police. He had appeared in person and had preferred a detailed statement together with a final report prepared by the Superintendent of Police, Special Cell, Trivandrum. This report was a full text of the investigation conducted by the Police Team and history of the whole matter. The report was marked as Ext A9. It runs about 7 pages and had remarked on all aspects of this case.

Before going into the details of the report Ext A9, the Commission would like to discuss the argument note preferred by the requester. His grievances were numbered one after another in a detailed manner. Twenty reasons were submitted by him. His first grievance was that no enquiry was conducted even though it was informed that there was severe threat to his life. The second allegation was that the gundas of the respondents had tried to attack him and the Circle Inspector. The third allegation was that his house had been set on fire. Another allegation was that a compound wall was erected on the southern boundary of his property encroaching into the land belonging to him. There were twenty such allegations and grievances submitted by him. It was also accompanied by 9 documents like the copy of the ration card, the copy of the kudikidappu certificate, copies of representations submitted to City Police Commissioner, Hon.Chief Minister, Hon. Home Minister, Chief Secretary, etc. It was also accompanied by a request addressed to the Chief Information Commissioner.

All these allegations were of the nature of grievance redressal. There were civil and criminal disputes between him and one of his neighbors and Ext A9 report was a valuable document in these context. A reference to this Ext A9 document produced by the respondent number 2 requires special mention. The Superintendent of Police, Special Cell, had stated that the allegations of the requester was that one Smt.Florence Antony had encroached into his property and constructed a compound wall and erected an iron gate. The encroachment was of about 1½ feet land. It was alleged that the said Smt.Florence Antony was conducting immoral activities in her house. The Superintendent of Police, Special Cell, had visited the spot and questioned several witnesses and inspected the CD file of Crime No.399/06 registered u/s.447, 427 and 379 IPC of Vizhinjam Police Station. He had mentioned that there was a civil case as SA.128/99 still pending before the Hon. High Court. It was further reported that the property of nearly seven cents was a kudikidappu property and still in the name of one Smt.Saraswathy Jagadamma and Smt.Theresammal Gomez. The house was a mud hut. The mother of the requester used to stay there, but after the death of mother, the requester had shifted from that house and was staying elsewhere. He was only an occasional visitor. There was a previous case which was investigated by the Circle Inspector of Police, Vizhinjam, one Mr.Baburaj. Ext A9 report would also show that a crime 399/2006 u/s.447, 427 and 379 IPC was once investigated but was referred as 'Mistake of Fact'. This case was investigated by Mr.R.Devaraj, Additional Sub Inspector, Vizhinjam Police Station. The only recommendation of the Supdt. of Police, Special Cell, while making this Ext A9 was that a reinvestigation into this crime was a must for which a recommendation was strongly made in the report. There was also an allegation that the requester did not co-operate with the Police enquiry.

It was true that the requester did not co-operate with the police enquiry. The requester had produced a notice Ext A10 and had made an imputation against the police that the notice received by him for an enquiry did not contain the name and address of the Officer who issued it and name and address of the

Police Station. He considered this notice as a malicious one issued unauthorisedly and that was why he had not co-operated with the police enquiry.

While answering question numbers 4 and 5 from the above said facts and report of the Police, the real dispute was a dispute of some landed property, destruction of a mud hut belonging to the requester and as alleged by him destroyed the hut by fire. He had also made certain allegations that even in the presence of the Circle Inspector, some Gundas tried to assault him. The proper dispute was a civil dispute that had resulted in criminal attack and finally culminated in setting fire and destruction of his house. As suggested by the Superintendent of the Special Cell, a thorough investigation into the matter was necessary. It was true that RTI Act is meant for dissemination of information at hand. But Section 7(1) and the proviso is also for furnishing information taking into consideration of the urgency of the situation. The Public Information Officer of the Police Department, Mr.Y.Anilkumar, the Inspector General of Police, had also admitted that a thorough enquiry and investigation reopening the case of crime 399/06 of Vizhinjam Police Station was a proper remedy suggested. Apprehension of the offenders and bringing them to book alone would redress the grievance of the requester.

Therefore, in the above circumstances, it was ordered that the Public Information Officer shall authorise an officer not below the rank of the Superintendent of Police to re-open Crime 399/06 of Vizhinjam Police Station and conduct an enquiry and would also take into consideration of the request made by him before the Hon.Chef Minister whether there was any threat to his life and threat of encroachment into his property and take appropriate action. The requester shall also co-operate with any process of enquiry proposed by the Public Information Officer. The report shall reach the Commission within 45 days of the receipt of copy of this order.

Pronounced by the Commission on this, the 17th day of November, 2007.

Authenticated copy

Secretary to Commission