BEFORE THE GOA STATE INFORMATION COMMISSION
Seventh Floor, Kamat Towers, Patto, Panaji, Goa.
CORAM: Shri. Prashant S. P. Tendolkar,
State Chief Information Commissioner
Smt. Pratima K. Vernekar,
State Information Commissioner

Appeal No.49/ SCIC/2009/

Shri Kashinath Shetye,
R/o Raj Excellency ,
Ribandar, Tiswadi Goa.

.....Appellant

V/s.

1. Public Information Officer Respondent No.1.
   Kadamba Transport Corporation Ltd.
   Paraiso de Goa Building, ...
   Porvorim Goa.
2. First Appellate Authority, Respondent No.2.
   Managing Director, KTCL,
   Parasio de Goa, Porvorim –Goa. .....

Appeal Filed on . 07/07/09
Disposed on. 25/4/2016

O R D E R

1. The brief facts leading to present appeal are as under:

   a. The appellant by his letter, dated 06/2/2009, sought certain information under section 6 of The RTI Act, 2005(ACT for short) from PIO/Respondent No.1. Since, the information was not furnished to him he preferred First Appeal and the First Appellate Authority while allowing the same by order, dated 24/04/2009 directed Respondent No. 1 to provide information.

   b. The second appeal came to be filed before this Commission as no information was received by him despite of order of First Appellate Authority. In this appeal the appellant prays for a direction to furnish information, as also for penalty, for disciplinary proceeding and compensation.

2. Reply was filed by Respondent No.1, PIO before this Commission on 19/01/2014. Vide said reply the PIO contended that since the information was voluminous and vague the applicant was asked to take inspection and to offer clarifications, but the appellant remained absent. PIO further submitted that

...2/-

he had made efforts to collect the information from their other Departments and that appellant was told to pay the money and collect the information but it was not complied with.

PIO has further contended that after passing of the orders by First Appellate Authority(FAA) by various letter made by PIO requesting him to give clarification as information sought was vague and voluminous. In the course of this appeal the Commission, during the hearing on 13/11/2014, has passed an common order instructing the PIO to invite the appellant for inspection with an order to give information free of cost.

3) A compliance report was filed by PIO stating that the appellant was called for inspection on 20/11/2014 from 10.00a m to 17.00hrs but, the appellant remained absent. It is also submitted in the compliance report that the appellant finally turned up for inspection on 10/12/2014 during which all the relevant document pertaining to the appellants RTI application were made available for inspection and so also copies of certain document sought by him in its application were given free of cost to him.

4) When the matter was taken up before this Commission Adv. Agarwal appearing on the behalf of Respondent No. 1 again volunteered to furnish the information and inspection. Accordingly, appellant was requested to inspect the documents.

On subsequent date of hearing it was submitted on the behalf of Respondent No. 1 by his advocate that the inspection was taken by the appellant and further submitted that in case if any further information if required the same could be made available to him. To which the appellant informed this Commission that only part paper were furnished for inspection. Considering the contention raised by both the parties it was apparent that the matter could not be resolved. Hence, the arguments were heard on the merits of the appeal.

5) The advocate for the Respondent reiterated that information is voluminous and also that the inspection was given. This Commission is of the view that the FAA who is senior officer of PIO has passed order after duly considering all the facts and as such re-agitation of the same point in this appeal is not open to the Respondents. More so the object of RTI Act is to bring transparency and accountability of functioning in a public office and the mandate of RTI Act is per say to provide information unless exempted under section 8 of the Act.

...3/-

6) There is nothing on record placed by the Respondent, PIO to substantiate their submission made by them in their compliance report. Though the PIO has filed compliance report the same is disputed by appellant. The PIO has also failed to furnish any acknowledgement from the appellant of having furnished the information. We have considered the submissions of both parties. Having not made any exception u/s 8 of the Act, the information is required to be furnished. The PIO has not produced any confirmation or records showing compliance of FAA order. In the result the prayer (i) of the appeal is required to be granted.

7) Coming to other prayers which are in the nature of penal action. The grant of penalty is akin to conviction in criminal proceedings and hence the elements of criminal trial should be available for grant of penalty. These observation of ours are based on the ratio laid down by Hon'ble High Court of Bombay at Goa in *writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others* wherein it is held;

> **"11. *The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."***

8) It is the contention of the appellant that there was deliberate delay caused by the PIO and on the basis of such allegation the appellant has sought penalty. Being so the burden to prove that there is malafied in delaying the information lies on the appellant. It is not disputed that the information is voluminous. It is observed that several letters were made by the PIO for inspection and for information. It is also on record that inspection was conducted but part information was made available . There appears some attempts on the part of PIO though not fully performed being not totally under control of the PIO.

9) There is no evidence on record to show that non furnishing the information was intentional or deliberate. On the contrary from the records it appears that appellant has also contributed in delay in receiving the information when offered, even by sending letter.

10) In the above background this commission observes that the PIO has shown his willingness in furnishing the information and that there is no intentional or deliberate attempt or malafied intention in not complying with FAA order. As such this Commission concludes that levy of penalty, disciplinary proceeding and compensation on the respondent PIO is not warranted in the proceedings.

...4/-

11) In the circumstances we partly allow the appeal in terms of prayer (i)Rest of the prayers are dismissed. The information to be furnished free of cost.

Copy of this order to be served on parties. No further appeal is provided against this order under the Act.

Pronounced in open Court.

Sd/-
(Prashant S. P. Tendolkar)
State Chief Information Commissioner
Goa State Information Commission,
Panaji-Goa

Sd/-
(Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa