GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

CORAM: Smt. Pratima K. Vernekar,
State Information Commissioner.

Penalty. 05/ 2011

In Appeal No. 141/2008

Shri Suboad Sawant,
B-2, Shanti Campus,
Malaviya Road, Mulund –West,
Mumbai -400 080. ..... Appellant/Complainant
V/s

1. **Public Information Officer (PIO),**
   Shri Pramod Bhat,
   O/o. Mamlatdar of Bicholim Taluka,
   Bicholim, Goa.

2. **Sadanand P. Gad,**
   Ex-Devasthan Clerk,
   Sunder Peth, Bicholim-Goa .....Respondent/Opponent

Decided on: 28/02/2017

O R D E R

1. Brief facts of the case are that this Commission by order, dated 31/1/2011 partly allowed the appeal and has directed PIO Shri Pramod Bhat the respondent no.1 herein and Ex-Devasthan Clerk, Shri Sadanand Gad the respondent no.2 herein to Show case as to why penal action should not be initiated against them for causing delay in furnishing the information.

2. Pursuant to the Show Cause notice reply was filed by respondent no.1 on 23/02/2011 and by Respondent no.2 on 28/4/2011.

3. As the matters were not taken up in the meantime for want of appointment of the commissioners, On appointment of this commission appellant as well as respondents were again notified. Pursuant to the notice appellant appeared in person and Respondent No. 1, appeared alongwith Advocate Kishore Bhagat and Advocate Aatish Mandrekar appeared on behalf of respondent no.2 and the matter was fixed for arguments .

4. The Respondent no.1, vide his reply dated 23/02/2011 have contended that with the approval of the district magistrate, the, then Mamlatdar has appointed respondent no.2 as Devasthan clerk. The Respondent no.1 has made / transferred the said application received under section 6(1) of the act from the Appellant in respect of Devasthan to respondent no.2 as the information was held by him. That Respondent no.2, who was the Devasthan clerk at relevant time did not cooperate with him for the reasons not known to him. According to respondent no.1, Respondent no.2 had friendly relation with the appellant and in connivance with the appellant ,had delayed sharing of the information and given wrong information to him with malafide intention. The Respondent no.1 has further contended that said delay, if any, it totally attributed to the conduct of Respondent no.2 as he failed to furnish the required information to the applicant within stipulated time and therefore he should be held fully responsible for delaying the information sought by the appellant. According to respondent no.1 as the most of the information sought by the appellant was pertaining to Shri Saptkoteshwar Devasthan and under control of Respondent no.2, officiating as Devasthan clerk and therefore the said Devasthan clerk was exclusively responsible for the said delay being deemed public information officer. Respondent no.1 has further contented that disciplinary action was initiated against Respondent no.2, Sadanand Gad and his service was terminated due to misconduct in his duties during this functioning as Devasthan Clerk.

5. Respondent No. 2 Shri Sadanand Gad by their reply dated 28/4/2011 had contended that he was ex-Devasthan clerk for Administrator of devasthan of Bicholim Taluka on temperory basis and his services were terminated 12/9/2008.,. It is his further contention that the application under RTI Act was never addressed to him nor he was a made a party of First appellate Authority no even before the Second appellate authority . it is a further contention the available information was provided by him with a good faith which was otherwise protected u/s 21 of RTI Act . It is his further contention that the Devasthan are not public authority of state of Goa and there fore the information of Devesthan cannot be furnished under the provision of RTI Act 2005 as they are private institution not covered under RTI Act.

6. Initially the said matter were being heard by the Chief Information Commissioner (CIC) but on the request of the appellant that the same should be heard by another commissioner, the same were made over to me for disposal. As the matters were old, the parties were made aware that the matters shall be taken up on priority bases. During the hearing

before me, several adjournments were sought by the appellant on one or the other pretext. In spite of his request to CIC to transfer the proceedings to other commissioner and inspite of granting such request by CIC on 26/4/2016, the appellant again filed similar application before the undersigned, which were disposed.

The appellant thereafter filed another five applications, one on 16/12/16 and four on 13/1/2017, before CIC for transfer of proceedings before another commissioner. The CIC after hearing the parties by its order, dated 17/1/2017 read with corrigendum dated 17/1/2017 dismissed the said applications and directed the parties to appear before the undersigned on 14/2/2017 at 10.30 a.m. and further directed the undersigned to dispose the proceedings as expeditiously as possible, but in any case on or before 28/2/2017.

7. The appellant during the hearing of transfer of application before CIC had submitted that Shri Sadanand Gad ex-Devasthan clerk the respondent no.2 herein has expired. He has also placed on record his Affidavit in support of his contention. The said fact was considered in the order passed by the CIC on 17/01/2017.

8. On 14/2/2017 at 10.30 a.m., when the matter was called the appellant remained absent however the advocate for respondent no.1 remained present. The applications filed by the appellant on the earlier date in the inward section enclosing a transfer application were placed before me and the same was ordered to be filed. The parties were directed to file their arguments in writing on or before 20/2/2017. On the said next date neither the appellant nor the respondents remained present and hence the matter was posted for orders on 23/2/2017.

On 21/2/2017 the respondent no.1 filed in the registry the records pertaining to his retirement from his services. In view of the failure of the parties to file any written submissions, the undersigned finds it appropriate to decide the present proceedings based on the records.

9. The present proceedings has been initiated against the Respondent No. 1 as the PIO and Respondent No. 2 as deemed PIO under the order of his Commission dated 31/1/2011.

10. The order dated 31/1/2011 refers to the reply of Respondent No. 1 in para 3 thereof . In the said para this commission has considered the reply of the Respondent No. 1 wherein the

Respondent No. 2 i.e. said Shri Gad was directed to furnish the details but said Shri Gad has replied that no such documents are available. Thus the Commission has prima facie held that an explanation should be sought from said Shri Gad as to why action should not be taken against him for causing delay . It is in this circumstances that he was joined as Respondent No. 2 herein.

11. Now as per the Affidavit filed by the appellant before CIC and as it is reflected in his said order dated 17/1/2017 that Respondent No. 2 said Shri Gad has expired. The proceedings of penalty being in the nature of criminal liability, in view of his death the proceedings stands abetted as against Respondent No. 2, said Shri Sadanand Gad.

12. Considering the reply filed by respondent No. 1, it would be necessary for me to consider the imposition of penalty against him in the light of the fact that he has retired.

13. The PIO appointed by the public Authorities are its employees and a privity of contract exist between such employees and the Public Authority/Government. Such privities concludes after retirement. Section 18 read with section 20 of the Act, provides for imposition of penalties on erring PIO and not public authorities. Thus the liability for payment of penalty is personal to PIO and is recoverable from the salaries payable to such employee's payable during their services. Similarly recommendation of disciplinary action u/s 20(2) can also be issued only during the period of service as after retirement the same becomes redundant. After the retirement, what is payable to the employee are the pensionary benefits only.

14. Pension Act 1871, which governs pension of retired employees, at section (11) grants immunity to the pension holder against its attachment. Said section 11 of The Pension Act 1871 reads:

11) ***Exemption of pension from attachment:*** *No Pension granted or continued by Government or Political consideration, or on account of past*

service or present infirmities or as a compassionate allowance and no money due or to become due on account of any such pension or allowance shall be liable to seizure, attachment or sequestration by process pensioner or in satisfaction of a decree or order of any such court"

15. Section 60 (1) (g) of civil procedure code which is reproduced here under also bars attachment of pensioner in following words:

"1) The following particulars shall not be liable to such attachments or sale namely:

(a) .....

(b) .....

(C) .....

(d) .....

(e) .....

(f) .....

(g) *Stipends and gratuities allowed to pensioners of the Government or of a local authority or any other employer, or payable out of any service family pension fund notified in the gazette, by the central government or the state Government in this behalf and political pension."*

16. Hon'ble Apex Court in ***Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra Appeal (Civil) 1874 of 1999,*** has held:

"*This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands....."*

17. The Hon'ble Apex court in yet another case viz. ***civil appeal NO 6440-41 of 2008,Radhe shyam Gupta v/s Punjab National Bank*** has held

" even after the retiral benefits such as pension and gratuity had been received by the any person, they did not lose their character and continued

to be covered by the proviso (g) to section 60 (1) of the code of civil procedure" .

18. From the reading of above provisions and from the ratio laid down by the Hon'ble Supreme court in various decisions , leaves no doubt that the benefits received under pension, gratuity by a retired person are immune to attachment. Under the circumstances this commission is neither empowered to order any deduction from his pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded.

19. Even other wise while deciding he appeal this Commission has primafacie found that said Shri Sadanand Gad, the respondent no.2 might have also contributed in causing delay in dispensing information. Hence deeming him as a PIO a notice was issued to him to Show Cause.

20. Hon'ble High Court at Bombay at Goa Bench at Panaji in the case of ***Shri A.A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007)*** has observed:

> ***"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"***

21. As has been found by this Commission while passing the order in appeal on 31/1/2011 that delay was contributory, in view of death of said Shri Sadanand Gad the level of contribution for delay by both the Respondents cannot be ascertained . Consequently it cannot be concluded that Respondent No. 1 herein was solely responsible for delay.

22. In view of the above I do not find any cogent and convincing evidence against respondent no.1 to hold that the delay caused in furnishing the information was either intentional or deliberate.

23. Considering the above findings, I find that the proceedings for imposition of penalty as initiated by this commission cannot continue to proceed and are required to be dropped. Consequently

notice dated 31/01/2011 issued by this commission to the respondents stands withdrawn.

Proceedings closed.

Notify the parties.

Pronounced in the open court.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided under the Right to Information Act 2005.

Sd/-

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