

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Penalty No. 45/2017
In
Appeal No. 146/2015

Caetano Monteiro,
H.No. 112/C, Cuelim,
Cansaulim Mormugao Goa.

V/S

Public Information Officer (PIO),
Secretary, Village Panchayat, Cansaulim
Arossim-Cuelim,

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 27/10/2017

ORDER

1. This commission , vide order dated 30/8/17 , while disposing the above appeal, had directed the respondent no.1 , being then PIO to show cause as to why penal action as contemplated u/s 20 of the Right To Information Act, 2005 should not be initiated against him for not responding the application of the appellant filed under section 6 of the RTI Act,2005 , within stipulated time of thirty days and for not complying the order passed by the First Appellate Authority (FAA) and for delaying the information to the appellant . In view of the said order passed by this commission, on 30/8/17 the proceedings stood converted into penalty proceedings .
2. The showcause notice were issued to then PIO on 19/9/17 .In pursuant to the notice, the then PIO Shri Kiran Mesta appeared and filed his reply on 10/10/17,
3. Vide said reply PIO has contended that his clerk smt Razia Sayed did not place before him said application of the appellant and he

learned about it only when the appeal was filed by the appellant before the first appellate authority. He contended that appellant had sought for the copy of the proposal figuring the names of persons who had proposed to take up the construction of the staircase near crematorium in ward No. IX(9) under ST funds, Since it was not available in the concerned file and there was a resolution found in the said file wherein the details as required by the appellant was available as such , the certified copy of the resolution was provided to appellant bonafidely so that purpose of the appellant in getting the said information is fulfilled .

It was further contended by the, then PIO that during the hearing before first Appellate authority , he was represented by Adv Girish sardesai and the order of the first appellate authority dated 20/11/15 was not communicated to him by the said Advocate . He further contended that he was not aware of the order of first appellate authority as such he could not comply the same. In support of his above contention , the Affidavit of Advocate Balkrishna P sardesai and reply dated 21/5/15 filed before FAA which was signed and filed by Advocate was also placed on record. The copy of the resolution which was furnished to the appellant on 21/5/15 was also placed on record by the then PIO to show his bonafides .

The then PIO also doubted the authenticity of the said proposal which was furnished to the appellant during the proceedings before this commission by the present PIO since there was no inward stamp and no signatures of the parties proposing the same were appearing on the same .

4. He submitted that this is the first time such appeal for penalty has been asked against him , and he bonafidely provided information whatever was existing in the said file .on that ground he sought for leniency and prayed for withdrawal of show cause notice issued against him .

5. In the nutshell the then PIO has contended that there was no willful intention on his part to refuse the information and that he has acted bonafidely in discharging his duties under the RTI Act .
6. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005 the Hon'ble High court of Bombay , Goa bench at Panaji in writ petition No.205/2007 ; Shri A A Parulekar v/s Goa State information commission has observed
"The order of penalty for failure to take action under the criminal law. It is necessary to ensure that the failure to supply information is either **intentional or deliberate** ".

"unless and until it is borne on record that any officer against whom order of penalty for failure to be sought to be levied and has occasion to comply with a order , and has no explanation or excuse available worth satisfying the forum, possessing the knowledge of the order to supply information, and order of penalty cannot be levied".
7. In the back ground of above ratio laid down by the Hon'ble High Court, the point arises for my determination is
 - a)Whether the information sought was deliberate and intentionally denied to him?
8. The PIO vide his reply has tried to justify the reason for not responding the application of the appellant within 30 days and for not complying the order of first appellate authority. The same is supported by the affidavit as such I have no hesitation in believing the then PIO .
9. Secondly it is seen from the records that the said proposal and resolution was passed and undertaken much prior to he joining the office of village Panchayat as Secretary. The copy of the resolution passed by the Panchayat body in the meeting

held on 20/5/2013 was furnished to appellant since the copy of the proposal was not available in the said relevant file by the PIO as soon he learnt about the same when he received notice of first appellate authority.

10. Section 21 of the RTI Act, 2005 bars from taking any legal proceeding against any person for anything which is done in the good faith or intended to be done under RTI Act or rule made there under;
11. The then PIO has acted diligently once he was aware of the said RTI application and even provided him the resolution copy which was available wherein the name of the proposer and sender are reflected. The same were provided in Good faith so that appellant can get part of the information which is available on record which will satisfy his requirement. As such the benefit has to go in favour of the PIO as per section 21 of the RTI Act.
12. The Delhi, High Court in case Registrar of Companies and others V/s Dharmendra Kumar Gard and Another's writ petition (C)11271/09 has held that ;

“The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, threat the personal penalty on the PIO can be imposed. This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be**

able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

13. the Hon’ble High Court of Bombay at Goa in writ petition No. 704/12 public authority V/s Yashwant Sawant has held that at para 6;

“ the imposition of such penalty is a blot upon the career of the officer atleast to some extent ,in any case the information ultimately furnished though after some marginal delay in such circumstances , therefore, no ought to have been imposed upon the PIO”.

14. The Honble high court of Punjab and Haryana at Chandigarh in civil w.p. No.6504 of 2009 ; state of Punjab v/s state information commissioner has held at para 3

“The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to obtain. It is not every delay that should be visited with penalty. If there is a delay and it is explained the question will only revolve on whether the explanation is acceptable or not . if there had been a delay of a year and if there was a superintendent, who was prodding the Public Information officer to act, that it self should be seen a circumstance where the Government authorities seemed reasonably aware of the compulsions of time and the imperatives of providing information without any

delay. The second respondents has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified”.

15. Considering the fact of the present case and ratio laid down by above court, I find the explanation given by the PIO is convincing and probable. I find no grounds to hold that information was intentionally and deliberately not provided to the appellant on a false ground by the then PIO.
16. As such I find that the levy of penalty is not warranted in the facts of the present case. Consequently showcause notice issued on 19/09/2017 stands withdrawn.

Proceedings stands closed

Notify the parties.

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 against this order under the Right to Information Act 2005.

Sd/-

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

Ak/-

