

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Penalty No. 54/2016

In

Appeal No. 85/SCIC/2015

Shri Tarachand Bhandari,
C/o Bharat Conductors Pvt. Ltd.
Plot-41, Phase III-A, Sancoale Ind.Estate,
Zuarinagar. Appellant

V/s.

1. The State Public Information Officer,
Executive Engineer(Trg),
O/o the Chief Electrical Engineer, Govt. of Goa,
Electricity Department, 3rd Floor,
Vidyut Bhavan Panaji Goa.
2. First Appellate Authority
Superintending Engineer Plg.(N),
Electricity Department, 3rd floor,
Vidyut Bhavan Panaji Goa. Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 03/08/2017

ORDER

1. This commission , vide order dated 17/11/16 , while disposing the above appeal, had directed the respondent, being then PIO to show cause as to why penalty and disciplinary proceedings should not be initiated against him for not providing the required information within stipulated time .In view of the said order passed by this commission, on 17/11/16, the proceedings stood converted into penalty proceedings.
2. The showcause notice were issued to PIO on 15/12/2016.
3. In pursuant to the notice the present PIO Shri J.S. Heremath appeared and filed his reply on 28/12/2016 interalia submitting that during the year 14-15 Shri Alexio Pinto was holding the charge of PIO

The then PIO Alexio Pinto appeared filed his respective replies on 31/1/17, 2/3/17 and on 29/5/17 along with supporting documents. It is the case of the then PIO Alexio Pinto that he was on leave

from 7/10/14 to 5/11/14 on a medical grounds. It is his further contention that Shri Yugesh P. Naik Lower Division Clerk was dealing with RTI matter was on leave from 3/11/14 to 28/11/14 as such the application which was inwards on 6/11/14 was not brought to his notice by the concerned clerk as he was on leave. It is his further contention that on 24/11/14 while going through the file of the desk of the concerned LDC, he noticed application seeking information dated 5/11/14 of Tarachand Bhandari and transferred the said application u/s 5 of the Right to Information Act to the PIO Div. XVI of the Electricity department, Margao vide letter dated 25/11/14.

It was further submitted that he has been diligent in his duties and as per the directives given by the FAA he after keeping the information ready intimated the appellant to pay an amount of Rs. 940/- to collect the information vide his letter dated 2/4/15.

The then PIO has further submitted that APIO of the office of stores and workshops –II Margao vide his letter dated 2/12/14 informed him that the file was forwarded to Chief Electrical Engineer Panaji vide letter dated 4/11/14. It is his further submission that the Executive Engineer (PROC) vide letter dated 5/1/2015 also informed him that the file was not in their possession and was submitted to the Joint Director of Accounts, office of the Chief Electrical Engineer, Panaji on 2/1/2015.

It is his further submission that on receipt of another letter from the applicant dated 3/1/15 seeking inspection of documents he again by a letter dated 14/1/15 addressed to deemed PIO Joint Director of Accounts requested them to comply with the requirement of the information requested. It is his further case that the Joint Director of Accounts vide his letter dated 15/01/15 replied that the file in transit return back to the office of the chief electrical Engineer. In other words the then PIO have submitted that at the relevant time when the application was made, the file was not in his custody and was moving. The correspondence exchanged between the deemed

PIO by him and the reply received from the deemed PIO have been enclosed to his reply.

4. The then PIO have also submitted that he while holding the charge of Executive engineer (Trainee) he was assigned the responsibility of the addressing of the training of the entire electricity Department of Goa . It is their further contention that the Post of PIO was additional entrusted to the designated office of the training centre .
5. The then PIO further submitted that the applicant had sought information related to tender documents connected to public tender and the document related to tender is on line and can be viewed online .
6. In the nutshell it is the case of the then PIO that he has acted bonafidely in discharging his duties under the RTI Act and the delay is any cause is due to above reason which was beyond his control.
7. The controversy which has arisen here is that a then PIO is liable for action as contemplated u/s 20(1) and 20(2) of the RTI Act 2005 or not?
8. For the purpose of considering such liability 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”.

9. In the back ground of above ratio laid down by the Hon'ble High Court, the point arises for my determination is

- i. Whether the delay in furnishing the information to the appellant was deliberate and intentional on the part of the PIO.
10. At in another case reported in Delhi High Court in case of Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's 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."

11. Hon'ble 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 no 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”.

12. Considering the fact of the case I find the explanation given by the PIO is convincing and probable . I find no grounds to hold that delay in dispensing the information was intentional and deliberate.
13. In view of above I do not find any cogent and convincing evidence against the Respondent No. 1 PIO that he had deliberately and intentionally delayed in providing him complete information. As such the levy of penalty is not warranted in the facts of the present case. Consequently showcause notice issued on 15/12/2016 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

