

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

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Penalty No.42/2017

In

Appeal No.96/SCIC/2016

Madonna Almeida,
H.No.257/1. 3rd ward, Bagdem,
Colva Salcete Goa.

... Appellant.

V/s

The Public Information Officer,
South Goa Planning Development Authority,
Osia Complex Arcade, 3rd fl.,
Margao-Goa.

... Respondent

O R D E R

DATE: 24/11/2017

1. While disposing the above referred appeal by order, dated 15/6/2017, this commission has directed the PIO to show cause as to why penalty as provided u/s 20(1) and/or 20(2) of The Right To Information Act 2005 should not be imposed/recommended against him.
2. The PIO on 11/7/2017, filed a memo attaching thereto the purported information which according to PIO was issued and handed over to the appellant long back on 24/2/2016 under receipt, dated 24/2/2016. The PIO has annexed the copy of occupancy certificate as also the receipt purported to be the receipt towards payment of the fees for information paid by appellant. The PIO also filed the copies of the information on rest of the points.
3. In reply to the show cause, notice dated 15/06/2017, the PIO filed his affidavit in reply. As per his said reply it is the contention of PIO inter alia that the appellant has filed two appeals

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nos. 96 of 2017 and 97 of 2017 and that both were running concurrently. According to him Adv. S. Parab was instructed to appear only in appeal no.97/2017 and that she has been attending only in appeal no.97 of 2017. According to PIO only after the order was passed in both cases that the memo of appeal in above referred appeal was collected on 5/7/2017. It is according to PIO that in view of the said fact the reply to appeal was not filed.

With specific reference to the first appeal it is submitted by the PIO that the hearing was fixed but the appellant failed to appear. However the PIO has admitted that the FAA has not passed any order in the first appeal. The PIO has tried to justify the grounds due to which the first appeal was not disposed but I am not inclined to accept the said version as there is no affidavit or reply of the first appellate authority on record. The PIO, being the respondent before FAA, has no locus to vouch for the FAA. Suffice to hold that the first appeal was not disposed.

With specific reference to the show cause notice issued by this commission, the PIO, by referring to the memo dated 11/7/2017, under which the copies of information is filed, has submitted that the completion certificate was furnished to the appellant on 24/2/2016. He has also relied on the receipt issued to the appellant for payment of Rs.1000/- as the fees under the act. The other information was also furnished to the appellant.

4. As the PIO has filed on record the copy of completion certificate as also the receipt issued in the name of the appellant, the appellant was given an opportunity to clarify the same. The appellant has filed written arguments. With reference to the said

completion certificate and the receipt, dated 24/2/2016 the appellant has submitted that the said claim of the PIO that a fee of Rs.1000/- is paid is false as the respondent has failed to provide information.

5. I have considered the pleading. As the PIO has relied upon the receipt of payment made by the appellant as the information fees, the same has to be presumed to be true unless proved otherwise. In the present case as the said receipt was relied upon by the PIO, the burden to disprove it and explain as to which transaction said receipt pertains to, was cast on the appellant. Accordingly clarification was sought from the parties on but the appellant could not clarify as to which transaction said receipt pertains to. Further opportunity was granted to parties to file written submissions if any on or before the date fixed for orders to which also the parties submitted that they do not wish to file the submissions.

6. I have considered the records. In reply to the show cause notice the PIO has submitted that the occupancy certificate which was sought was furnished to the appellant on 24/2/2016. This is substantiated by the PIO through the receipt dated 24/2/2016. The presumption flows in favour of the PIO that it was actually paid. In spite of granting the opportunity to the appellant she failed to discharge the burden and prove as to transaction the said receipt refers to. In the absence of such proof the presumption that the said receipt relates to the present application lies in favour of the PIO.

7. The Hon'ble High Court of Bombay, Goa bench at Panaji, while dealing with a case of penalty (**Writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others**) 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.”

8. In her arguments the appellant has a grievance that the South Goa Planning and Development Authority is in the habit of delaying the approvals and certificates. Such grievance pertains to the functioning of the office and hence beyond the jurisdiction of this commission. In the light of the above Judgment of Hon'ble High Court, the only point required to be dealt herein is whether there was delay in functioning of the information sought and that such delay was deliberate and intentional.

9. Considering the nature of allegations and the contentions of the parties and the evidence on record I do not find ingredients of deliberate and intentional act as required under criminal law and the PIO is entitled for the benefit of doubt. The proceedings therefore are required to be dropped.

10. Before I part with the matter, considering the contentions raised by the PIO that the Advocate S. Parab was instructed only to attend appeal no.97/SCIC/2016 and that she has been attending only that appeal and that she was served only with the copy of the summons of this appeal, it needs mention that it is seen from the records that said advocate is representing the respondent authority before this commission in all matters. Considering her authorization from the respondent authority all her submissions are recorded in the proceedings as on behalf of the authority. It is in this background that the copy of summons was served on her. Had the copy of the appeal memo not received by her the same could have been brought to the notice of this commission in the course of

hearing. The service of summons could have been refused. On the date of hearing said advocate had undertaken to file Vakalatnama on behalf of PIO on the next date of hearing as is recorded. On the subsequent dates of hearing also said advocate appeared and requested for date. Such submissions of a learned advocate cannot be held as without authorization and responsibility. Hence said submissions of PIO are not appreciated. However as the PIO suggests that the authority to the advocate is specific to case and not general, hence forth presence and submissions of advocate on behalf of the respondent authority shall not be considered unless a proper vakalatnama is filed indicating specific authorisation.

11. With the above observations and findings the notice, dated 15/6/2017 stands withdrawn. Proceedings closed.

Order to be notified to parties.

Pronounced in the open proceedings.

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