

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

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

Penalty Case No. 12/2017

In

Appeal No. 70/SCIC/2014

Shri Sagar Ulhas Gawas,
R/o Plot No. 6, Khaitwada, Kharpal,
Dodamarga, Bicholim GoaAppellant
V/s.

1. Village Panchayat Secretary (latambarcem) /
Public Information Officer (PIO),
O/o Village Panchayat Latambarcem,
Bicholim, GoaRespondent

Disposed on:- 28/04/2017

ORDER

1. While disposing the appeal NO. 70/SCIC/2014, by an order dated 6/02/2017, this Commission directed to issue showcause notice to Respondent PIO, Village Panchayat Secretary (Latambarcem), Bicholim-Goa under section 20(1) and 19 (8) (b) of the RTI Act 2005, and also seeking reply from PIO to showcause as to why the penalty and compensation as prayed for by the Appellant should not be granted.
2. In pursuant to the notice the Respondent No. 1 PIO appeared and filed his reply on 10/04/2017. In the said reply it was contended that the information was furnished to the Appellant within reasonable time before passing of order dated 27/06/2014 by the FAA, as such the Respondent thought and was under impression that there was no need to furnish the same information to the Appellant once again. He has further contended that there was no intention of the Respondent to disobey the order of FAA nor to infringe the provision of RTI Act. It was also contended by the Respondent that he was holding additional charge of Village Panchayat Mencurem Dhumsem, Goa and was performing the duties a BLO to carry out time bound election work. It was further

contended that the Appellant had done illegal construction of the house and he had requested the Respondent to allot the house no. to the illegal construction which was declined. As such the Appellant had filed application under RTI Act to harass the Respondent. He had also sought for lenient view.

3. The records shows that the Judgement and the order was passed by the FAA on 27/06/2014 there by directing the Respondent PIO to furnish the information to the Appellant within 15 days free of cost. The present appeal is filed by the Appellant on 9/07/14 apparently the appellant had not waited for 15 days. The cause of action would have been arisen only after 11/07/2014. The Respondent PIO have relied upon the various documents such as letter dated 7/04/14 and order dated 5/04/14 issued by the Deputy Collector and ARO Assembly Constitution Pernem-Goa and letter dated 13/06/2014 addressed to the appellant etc in support of his contention that he was holding additional charge.
4. I have considered the reply and various correspondence placed on record by PIO. It is not disputed that there is delay in receiving the information by the appellant. However considering the rival contention of the parties the point required to be decided by this commission is whether the delay is purposive on the part of PIO.
5. Hon'ble High Court at Bombay at Goa Bench at Panaji in 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."
6. : *Yet in another case reported in Delhi High /court in case of Registrar of Companies and Others V/s Dharmendra Kumar Garg and Anothers in W.P. (c) 11271/2009 in judgment delivered on 1/06/2012 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."

7. The High court of Punjab and Haryana at Chandigarh in Writ Petition No. 6504 of 2009; State of Punjab and others V/s State Information Commission Punjab has held at para 3:-

*"The penalty provisions under section 20 is only to sensitise 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 whether the explanation is acceptable or not. If there had been a delay of a year and if there was superintendent, who was prodding the Public Information Officer to Act, that is 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 2nd respondent has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified.*

8. I am satisfied with the justification given by Respondent PIO. And I do not find any cogent and convincing evidence as against Respondent PIO to hold that the delay caused in providing the information was **either intentional or deliberate** as such I find that proceedings for imposing penalty as initiated by this Commission cannot proceed.
9. However, since there is some delay in furnishing the information the Respondent PIO is hereby directed to be vigilant hence forth pertaining to RTI matters and any such lapses in future will be viewed seriously.

10. Showcause notice dated 21/02/2017 stands withdrawn.

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.

Pronounced in the open court.

Sd/-

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

KK/-fn