

GOA STATE INFORMATION COMMISSION

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

Penalty No. 21/2014
In
Complaint 122/SIC/2012

Shri Mandar Madhukar Naik,
R/o H.No. 453, Jognibhat Manerkarwada,
Vastawada, Curchorem, Goa.

.....Appellant

V/s.

1. Shri Agnelo Fernandes,
Chief Officer/ Public Information Officer,
O/o Municipal Council of Curchorem Cacora,
Curchorem Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 13/10/2017

ORDER

1. This commission While disposing the above complaint, vide order dated 27/2/2014 had come to the findings that PIO has failed to furnish the information in time and was liable for action u/s 20 of the Act and as such as directed to issue fresh notice to then PIO u/s 20(1) and called upon his explanation why penalty should not been imposed on him.
2. Accordingly Showcause notice was issued to then PIO Shri Agnelo Fernandes on 19/6/2014.
3. In pursuant to Showcause notice dated 19/6/14 the then PIO Shri Agnelo Fernandes filed his say on 25/7/2014 thereby enclosing the relevant documents.
4. After appointment of this Commission, the fresh notice was issued once against to then PIO Shri Agnlo fernandes on

13/9/2017 in pursuant to which then PIO Shri Agnelo fernandes filed his affidavit in reply on 10/10/2017.

5. Vide both the replies it was contended that the Smt. Ujjaini Prabhu Desai APIO misplaced the correspondence and as such information could not be issued in time.
6. It is further contended that he had issued memorandum dated 7/11/2012, 17/8/2012, order dated 27/11/2012 to said dealing hand Ujjaini Prabhu Desai . It was further contended that she was arrogant and her behavior was uncivilized and as such the chair person had reported the matter to DMA and also complaint against her was filed by the Councilor to the police . vide said replies it was again contended that PIO was not at fault in any manner and the delay in furnishing information was not intentional or deliberate.

It was further contended that he was holding two additional charges one is Member Secretary Ravidra Bhavan Curchorem and electoral Registration office of 37 Curchorem .

7. In the nutshell the Respondent PIO have contended that there was no willful intention on their part to refuse the information and that they have acted bonafidely in discharging their duties under the RTI Act .
8. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act .

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 akin action under the criminal law . It is necessary to ensure that the failure to supply information is either intentional or deliberate “.

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

a) Whether the delay in furnishing information was deliberate and intentionally ?

9. In a present case the contention of then PIO shri Agnelo Fernandez that he was holding more than two charges besides main regular charge is not disputed by the appellant herein. As he was holding more than two additional charges as such he had no absolute control over the administration of the public authority concerned herein besides he had to also impart his duties as else where simultaneously. It is further observed that He also could not get proper assistance from the dealing hand too. He had taken necessary and appropriate steps in furtherance of procurement of information but unfortunately the same information would not be furnished to appellant as it was misplaced by dealing clerk.
10. There is also no sufficient cogent and convincing evidence on record to show that the delay in furnishing the information was purposive . On a contrary the explanation given by the PIO appears to be convincing and probable as the same is supported by documentary evidence . In the above given circumstances I am of the opinion that PIO cannot be made scapegoats for the fault of the dealing hand.
11. The Showcause notice was issued in present case for the failure to comply *with the order of first appellate authority within stipulated time*. The records reveals that FAA vide order dated 12/7/2012 had was directed to furnish the information within 7 days time from the date of the receipt of the order. The information was furnished to the appellant on 7/8/2017 as such the delay is not very substantial.
12. 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 at least to some extent ,in any case the information ultimately furnished though after some marginal delay in such circumstances , therefore, no penalty ought to have been imposed upon the PIO”.

13. Yet in another decision 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”.

14. The ratio laid down by the above courts is squarely applicable to the facts of the present case. In the present case the PIO have shown his bonafides by issuing the memorandum to the clerk /dealing hand of their office. The information also furnished to the appellant in compliance to the order of First appellate authority. The delay is marginal in nature .
15. The explanation given by the PIO appears to be convincing and probable As such I hold that there are no grounds to hold that information was intentionally and deliberately not provided to

him. As such I am of the opinion the levy of penalty is not warranted in the facts of the present case. Consequently showcause notice issued on 19/6/14 and 13/9/2014 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/-