

GOA STATE INFORMATION COMMISSION

‘Kamat Towers’ Seventh Floor, Patto, Panaji – Goa

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

Penalty No.05/2009

In

Appeal No.248/SCIC/2008

Shri Shashikant B. Bhagat,
Bhagatwada, Canacona-Goa.

..... Appellant

V/s

- 1) The Public Information Officer,
The Chief Officer,
Canacona Municipal Council,
Canacona – Goa.
- 2) The First Appellate Authority,
The Director,
Directorate of Municipal Administration,
Panaji-Goa. Respondents.

Decided on:07/06/2017

ORDER

1. This Commission, vide order dated 25/06/2009, while disposing the above appeal, had directed the respondent, being the then PIO, to show cause as to why penalty of Rs. 250/- per day delay should not be imposed on him for not providing the required information within stipulated time. In view of the said order passed by this Commission, on 25/06/2009, the proceedings stood converted into Penalty proceedings.

2. It is seen from the records that the then PIO challenged the said order, dated 25/06/2009, by Writ Petition No.439/2009, which was eventually dismissed vide order, of the Hon’ble High Court dated 02/03/2010.

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After disposal of the said writ petition, the parties were notified pursuant to which the parties appeared.

3. On 4/1/2017, the present PIO filed his reply interalia submitting that the penalty is to be recovered from the concerned PIO. On 27/02/2017, the appellant filed application to this Commission to join Shri Agnelo Fernandes, presently posted as Dy. Collector Dharbandora, being the then PIO, as a party to the present proceedings. Said application was granted and accordingly then PIO, Shri Agnelo Fernandes was notified. Accordingly he appeared and filed his written submissions. The oral arguments on behalf of parties were also heard.

4. In his arguments the then PIO has contended that at the relevant time, he was working as Chief Officer (C.O.) of the Cuncolim Municipal Council. He was given additional charge of Canacona Municipal Council on 28/11/2009 by relieving one Shri Ajit Panchwadkar of the additional charge. He has annexed the said order dated 28/11/2007.

It is further according to him that the APIO was looking after the RTI matters and has misplaced the correspondence and as such the information could not be issued in time. According to him the delay was not intentional.

Then PIO has further submitted that he was visiting Canacona Municipal Council only on few occasions and all correspondence of Canacona Municipality was brought to Cuncolim Municipal Council and that the concerned staff failed to bring the appellants application to his knowledge in time. He has also a submission that the act was new and was not aware of the repercussions. He has further submitted that he has not drawn any salary from Canacona Municipal Council being additional charge and hence he has rendered free service to the Canacona Municipal Council. The then PIO has also argued that

as more than three years have passed no penalty can be recovered.

5. The appellant has also filed his written submissions through his advocate. In her arguments, while meeting the said submissions of PIO, the advocate for appellant submitted that the respondent PIO accepted that at the relevant time he was serving as PIO. According to her the Act contemplates that a public officer to be appointed as a PIO and if he fails to furnish information in time he is liable to pay penalty @250 per day and it nowhere stipulates that the PIO has to draw salary from the charge in which he is serving as a PIO. She further submitted that the penalty is time barred also cannot be accepted as the penalty proceedings were initiated in the appeal order and are yet to culminate and that penalty is not a recovery suit which has limitation and that it is a fine that is imposed and it is liable to be recovered anytime after the liability is fixed and the penalty imposed.

The advocate for appellant has further contended that the PIO's contention that the delay is on account of the APIO also cannot be accepted as the duty is cast on the PIO to furnish the information within 30 days and APIO is only assisting the PIO to compile the information and further that the PIO was well aware of the fact that the appellant has requested to this information and the 1st appellate authority had directed to furnish this information to the appellant within 7 days and inspite of specific direction in terms of the order passed by the 1st Appellate Authority the PIO acted in blatant defiance of the order and failed to furnish the information within the stipulated time. According to her even after the order of this commission the information is not furnished.

By relying on the judgment in the case of *Suganthi Suresh Kumar versus Jagdeeshan, 2002 (1) ALLMR 936 (SC)*

advocate for appellant submitted that the Act was legislated to ensure transparency in the administration and the penalties as contemplated under section 20 is to act as a deterrent against the officers like the respondent PIO for delaying the information and defying orders and Judgments passed by the Appellate Authorities under the Act.

6. The controversy which has arisen here is whether the then PIO is liable for action as contemplated u/s 20(1) and/or 20(2) of The Right To Information Act 2005 (ACT). For the purpose of considering such liability the High Court of Bombay, Goa bench at Panaji in writ petition .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.”

7. In the backdrop of the above ratio as laid down by the Hon’ble High Court and considering the rival contentions of the parties, the points which arise for my determination are:

i) Whether the penalty proceedings cannot be continued after the period of three years.

ii) Whether the delay in furnishing the information to the appellant was deliberate and intentional on the part of the then PIO.

8) Coming to the first point for determination whether the penalty proceedings cannot be continued after the period of three years, I do not find any bases in said objection of PIO. This proceedings is not a Civil suit for recovery of money but is a continuation of the appeal in respect of some of its prayers. As the commission prima facie felt that there is a delay in furnishing the information at the end of PIO notice was ordered to be issued to him to explain the delay. Such and order was

challenged before the High Court by PIO and consequently was stayed. The proceedings were continued after disposal of Writ Petition. The period of three years as is claimed by PIO has been crossed due to pendency of the proceedings, which was otherwise a continuous process.

In view of the above, I find no force in the submission of the then PIO that the proceedings cannot continue after three years. Hence hold that the proceedings for penalty are maintainable.

9) Coming to the second point for my determination, on perusal of the records it is seen that the entire defense of the PIO is resting on the contention that he was the chief officer of the Cuncolim Municipal Council and that he was given additional charge of the Canacona Municipal Council, which is the public authority concerned herein, and that he was visiting the latter occasionally and the correspondence of the same was brought to him at Cuncolim for disposal. It is his version that the APIO did not produce the concerned application filed by the appellant u/s 6(1) of the act, before him and hence the delay.

10. Section (7) (1) of the Right to Information Act 2005 (Act for short) reads:

“7. Disposal of request. (1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in section 8 and 9:

Thus the act provides a clear 30 days time to the PIO to respond the application in either way by granting or rejecting the same **subject to** the fact that another person i.e. the APIO receiving and forwarding the applications under the act to the PIO as is required u/s 5(2) of the act which reads:

“5.Designation of Public Information Officers.____(1) ----

(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission as the case may be:”

Thus the provisions of section 7(1) are not independent but to be read with section 5(2) of the act which requires consideration of the role of APIO while considering the said period granted to PIO.

11. In the present case the contention of then PIO is that he was the Chief Officer of the Cuncolim Municipal Council and that he was given additional charge of Canacona Municipal Council. This fact is not in dispute and is also substantiated by the document viz. order dated, 28/11/2007.

12. In his submissions the then PIO has contended that the staff has not placed before him all the correspondences and that he was sitting in the office of Cuncolim Municipal Council and

occasionally visiting Canacona. Considering the above circumstances I find that as the then PIO had charge of the Public Authority involved herein in addition to his regular charge of Cuncolim Municipal Council he had no absolute control over the administration of the same and he had to also impart his duties else were simultaneously.

13) Section 7(1) of the act as is reproduced above, requires that the PIO shall have at his disposal clear thirty days time to respond to the seeker's application u/s 6(1) of the act. If one visualize situations wherein the PIO could not get thirty days for responding the application due to his transfer and the new PIO also gets part balance period, imposition of penalty on either of the PIO would lead to gross injustice to the PIOs.

14) In the present case as the then PIO had to work under additional charge, his period of work was apportioned and divided and it would be inappropriate to assume that he had clear thirty days at his disposal to respond the application. Moreover the fact as to when the APIO has placed the application before him is also not answered.

15) In the case of A. A. Parulekar (Supra) while arriving at the finding as above it is observed by Hon'ble High Court at para (11) of thereof as under:

“11. Unless and until it is borne on record that any officer against whom order of penalty for failure is sought to be levied and had occasion to comply with the order and has no explanation or excuse available worth satisfying the forum posses the knowledge of the order to supply information, as order of penalty cannot be levied.”

16) Subscribing the above view in the case of A. A. Paruleker (Supra), the Hon'ble High Court of Bombay, Panaji bench in

another case of *Shri Shivanand Salelkar V/S the Goa State Information Commission and another (Writ Petition No.488 of 2011)* has also set aside the order passed by this Commission imposing penalty against the PIO.

17) Considering the facts of the case I find the explanation given by the PIO is convincing and probable. I find no ground to hold that delay in dispensing information was intentional or deliberate. The ratio in the case of *Suganthi Suresh Kumar V/S Jagdeeshan* (supra) as relied upon by the appellant is not applicable herein.

18) It is also the grievance of the appellant that inspite of the orders, dated 25/6/2009, passed by this commission the appellants has not been furnished the information as ordered. This grievance can be redressed by directing the present PIO of Canacona Municipal Council to comply with the said orders of this commission dated 25/6/2009.

19) In the facts and circumstances of the case and considering the explanation of the then PIO, I find no grounds to impose penalty against him. In the result the show cause notice, dated 25/06/2009, issued by this Commission in the above appeal stands withdrawn.

Present PIO of Canacona Municipal Council shall furnish the appellant with the information as ordered by this commission vide said order, dated 25/6/2009, if not furnished.

Proceeding closed.

Order be Communicated to parties.

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