

GOA STATE INFORMATION COMMISSION

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

Penalty No.23/2017

In

Appeal No.127/2016

Shri Antonio Bernardo Cost,
H. No.511, Bollepand Fatorda,
Margao, Salcete –Goa.

..... Appellant

V/s.

1. Public Information Officer
Secretary, V.P. Cavelossim,
Office of V.P. Cavelossim,
Cavelossim Salcete –Goa.

2. First Appellate Authority
The Block Development Officer,
Mathany Saldhana Administrative Complex,
Margao-Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 17/05/2017

O R D E R

1. In this case while disposing the appeal this commission by an order 17/3/2017 showcause, notice to then PIO why the penalty should not be imposed u/s 20(1) of the RTI Act on him.
2. In pursuant to the notice dated 10/04/17 then PIO Shri Shankar Naik appeared and filed his reply on 17/04/2017 and submitted that his reply may be treated as his arguments .
3. Vide his reply dated 17/4/17 he has contended that he was not regular Secretary and he was working as Gram Sevak and was given temporary charge to act as secretary due to the shortage of regular Secretary . He further contended that

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his act, in not responding the application of the appellant was due to ignorance and was not intentional. He further contended that he has furnished the information to the appellant on 09/06/16 before passing of the order by the FAA and that he was not aware of the fact that he had to refurnish the information to the appellant after the order of FAA. He sought leniency in the above matter.

4. 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."

4. Yet in another case i.e. (Writ Petition No. 11271/2009) Hon'ble Delhi High Court in case of Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another 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.”

6. 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 sesitize 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 a

7. If one apply the above ratio and considering the fact the PIO, Shri Shankar Naik was only Gram Sevak and was given temporary charge of Secretary, I find that it will not be appropriate on the part of this Commission to penalize him. There is nothing on record that a such acts are persistence on the part of Shri Shankar Naik, as such lenient view is taken in this matter and as such I find that the levie

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of penalty is not warranted in fact of the present case. Notice dated 10/4/17 issued to the then PIO Shri Shankar Naik is here by 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.

Pronounced in the open court.

Sd/-

(Ms.Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa