

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

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

Penalty Case No. 55/2016
In
Appeal No.110/ SCIC/2014/

Smt. Anisha A. Mantondkar,
H. No. 86/1,
Paithan, Penha-de-France, Porvorim-GoaAppellant.

V/s.

Public Information Officer,
Shri Ashutosh Apte, Under Secretary
(Revenue), Secretariat, Porvorim-GoaRespondent

Decided on: 27/03/2017

ORDER

1. While disposing the appeal, by an order dated 14/12/2016 , this Commission directed Respondent No. 1, PIO to furnish the information at point No. 6 of his application dated 18/07/2014 within 15 days from the date of receipt of the order. In the same order this Commission also issued showcause as to why penal action as contemplated under section 20(1) and 20 (2) of the RTI Act 2005 should not be initiated against him and sought reply from PIO as to why the penalty and disciplinary action and compensation as prayed for by the Appellant could not be imposed on him.
2. Said show cause notice was replied by PIO Shri Ashitosh Apte on 23/01/2017 interalia submitted that the application of the appellant dated was received by him from Deputy Secretary and PIO GPSC on 06/08/2014 there by requesting him to furnish the information sought at point No. 6 by the applicant vide her letter dated 18/07/2014 and accordingly the appellant was called upon

vide their letter dated 19/08/2014 to collect certified copies of the documents by paying Rs. 6/- . In spite of which she did not attend nor deposited fee nor collected the information. It is also contention of the Respondent PIO that appellant was working as Inspector of Settlement and Land Records who was promoted on Adhoc basis and due to administrative reason her regular promotion was delayed. After her regular promotion she has not perused the Appeals filed by her and as such according to him the appellant have used this RTI Act as a tool only to get her work done. It is further contention of the Respondent PIO that the information sought by the Appellant was very much available in the Head Office of Settlement and Directorate of Records and she had all the access to the same. It is further case of the Respondent that when he conveyed the Appellant to pay the fee and get the information as requested, she has not deliberately collected information rather preferred first appeal and as such very conduct of the Appellant shows that she was using pressure tactic on Department to promote her on regular basis.

3. The Respondent No. 1 have vide said reply have also tried to justify his non appearance before this Commission and have contended that it was not intentional or deliberate.
4. The Respondent PIO also filed compliance report on 6/02/2017 pertaining to order passed by this Commission on 14/12/2016 in appeal No. 110/SCIC/2014.
5. I have considered the reply and the various correspondence more particularly the annexures to the reply and the compliance report filed by the PIO. It is not disputed that there is delay in receiving the information by the appellant. However considering rival contention of the parties the point required to be decided by the Commission is whether delay in information was purposive on the part of PIO.
6. Hon'ble High Court at Bombay at Goa Bench at Panaji in the 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”

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. It is contention of the appellant that there was deliberate delay caused by the PIO and it is on the basis of such allegation the appellant has sought the Penalty. Being so the burden to prove that there was malafides in delaying the information lied on the appellant. By continuously remaining absent, she has failed to discharge her burden. On the contrary the records shows the PIO vide his letter dated 19/08/2014 volunteered to furnish the information at point No. 6. On perusal of the said letter it could be gathered that the application under section 6(1) dated 18/07/2014 addressed to the PIO GPSC was received by his

department on 06/08/2014 and he has duly replied to the appellant on 19/08/2014 there by requesting the appellant to collect the certified documents from their department by paying fees of Re. 6. It appears from the records that appellant herself has delayed in receiving the information when offered.

9. In the above circumstances this Commission has observes that Respondent have showed his bonafide in furnishing the information. As such this Commission comes to the conclusion that levie of penalty on the Respondent PIO is not warranted in the present proceeding. In the result notice dated 27/12/2016 issued by this Commission under section 20(1) and 20(2) of the RTI Act 2005 stands withdrawn proceedings stands closed.

Proceedings stand 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