

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

Penalty No. 08/2014
In
appeal No.70/SIC/2013

Shri Vaikunth V. Parab Gaonkar,
R/o. H.No. 96, Gaonkar Wada,
Bicholim Goa.

..... Appellant

V/s.

1. Smt. Varsha Naik,
The Chief Officer/ Then Public Information Officer (PIO),
(16/02/2012 to 4/05/2013),
Bicholim Municipal Council,
Bicholim- Goa.

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 27/08/2018

ORDER

1. This Commission, vide order dated 24/04/2014, while disposing the above appeal, had directed registry of this commission to open the new penalty case under new number and the Respondent No.1, being then PIO to show cause as to why penalty should not be initiated against her.
2. In view of the said order passed by this Commission, on 24/04/2014 the proceedings stood converted into penalty proceedings .
3. In pursuant to the said order dated 24/04/2014, the showcause notice were issued to then PIO by my predecessor on 27/5/2014 and after the appointment of this commission on 13/09/2017.
4. In pursuant to the notice the then PIO Ms Varsha Naik was represented by Advocate Sneha Sawant Ghatwal, alongwith her associate. Reply of then PIO Smt. Varsha Naik was filed on 15/01/2018. Additional reply cum-written submission also filed on 26/02/2018 alongwith enclosure.

5. The Appellant had also filed application dated 14/10/2014 and on 1/06/2018 for production of additional documents on record to which rejoinder was filed by the Respondent PIO on 18/11/2014 and on 23/7/2018.
6. I have scrutinize the records available in the file and also the submission made by both the parties.
7. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005 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".
8. In the back ground of above ratio laid down by the Hon'ble High Court, the point arises for my determination is
 - a) Whether the appellant is entitle for the relief as sought on the ground of delay in transferring point NO. 1?
9. As my predecessor in her order dated 24/4/2014 have not specified or reproduced the contention of the appellant in the order passed by her this commission felt it appropriate to hear the appellant .
10. It was submitted by the appellant that section 6(3) permits transfer in two circumstances, firstly if the information was held by another PIO or that subject matter is closely connected with a other public authorities. It is his case that PIO has failed to prove that the requisite information was held by another PIO at relevant point of time. He took me through the letter dated 20/2/2013 and submitted that the plan was not available with the PIO and as such it was a duty of PIO to reply that the information was not available.
11. It is further the case of the appellant that he had filed the application on 7/1/2013 and the PIO was bound in terms of

section 6(3) of RTI Act, to transfer the application within period of 5 days . It is his contention that the application was transferred on 1/2/2013 instead of 11/1/2013 and the delay in transfer of the application by then PIO was intentional and deliberate with malafide motives as he had issued notice on 7/1/2013 in terms of section 289 of Goa Municipal Act, 1968 to the then PIO. It is case of appellant that Respondent PIO was aware that furnishing of the information would strengthen appellant claim in the notice u/s 289 of the Goa Municipal Act 1968. He further submitted that the outcome of the petition filed by him before the Director of Municipal Administration would have been different if she had replied that the information at point no. 1 is not available. It is his further contention that there is a fine provided under the Municipal Act for occupying new construction without occupancy certificate and the PIO who was officiating as chief officer of Bicholim Municipality allowed to occupy 29 shops without Occupancy Certificate for that building and to avoid all the penalty /fines that would have been imposed on her she delayed in transferring the application. He further submitted that the said fact is evidence from the documents placed on record by him on 1/6/2018.

12. He relied upon the decision given by the Apex Court in case of in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya and submitted that it is clear from the said decision that PIO should not create the information and he further contended that the PIO who was also officiating as Chief Officer created the requisite information at point No. 1 subsequently and the reasons for creating information not to help him but to elude the clutches of law which will penalize the Respondent in terms of section 188(3)(a) and (b) of Goa Municipality Act, 1968. and the penalty amount was amounting to about 5 lakhs, as such it is his contention that PIO took calculative risk of not transferring application within 5 days so if at all if the penalty is imposed in the present proceedings it would be amounting to maximum Rs. 25,000/-.

13. He further submitted that vide letter dated 4/2/13 he had sought explanation from the PIO for the delay caused for transferring the said application and that he had also informed vide said letter that failure to reply by PIO, an appeal and complaint would be filed interms of section 20(2)and 20(1) of RTI Act, but she did not give any explanation nor responded to his letter. The appellant vehemently pressed for penal provision as against PIO for delay in transferring the said application
14. The Respondent PIO vide her replies contended that the appellant have not challenge the decision of the first appellate authority and hence the second appeal is not maintainable consequently the penalty proceedings which have been initiated against the Respondent in pursuant of the said second appeal are also not maintainable and liable to dismiss .
15. It is further contended that Respondent PIO had supplied the information regarding four points (point no. 2 to 5 to the appellant) and she vide letter dated 1/2/2013 transferred the said application to the Deputy Town Planner, Town and country planning Department, Bicholim with respect to point No. (1) of the said application. It was further contended that the said revised plan was not in power and possession of the Respondent on 7/1/2013 and that she could have refused to provide said information on such ground. She further contended that she was aware that the Goa State Urban development agency(GSUDA) is about to submit revised plan to the Respondent which in turn was supposed to be forwarded to Dy. Town Planner of Town and country planning Department for approval and with a bonafide intention and in order to help the appellant waited till she received the said revised plan from GSUDA.

It was further contended that although the said revised plan was originated in the office of GSUDA, she could not transfer the said application to GSUDA for supplying the information at point

No.(1) as the said revised plan was required to be submitted to the Town and country department for approval.

It was further contended that GSUDA forwarded the said revised plan to the Respondent on 24/1/2013 and the Respondent in turn forwarded the same on 25/1/2013 for approval. Hence it is her contention that the time limit as fixed by the proviso to subsection (3) of section 6 of RTI Act 2005 shall be deemed to have commenced from 24/1/2013 and not from the date of application i.e on 7/1/2013. In support of her above contention she had relied upon the extract of inward and outward register of Bicholim Municipal council .

16. In the nutshell it is her contention that there was no willful intention on her part to refuse the information and that she has acted bonafidely in discharging her duties under the RTI Act .
17. The appellant herein vide memo of appeal has only sought for invoking penal provisions as against then PIO on the ground that there was delay of 21 days in transferring the point No.1 of the said application to the other concerned PIO of the other public authority. Appellant does not have any grievance with regards to furnishing of the information at point No. 2 to 5 by the PIO. Only grievance raised herein is regarding the delay in transferring point No. 1 by Respondent no. 1 PIO to the PIO of other Department .
18. The PIO has furnished him information with regards to point No. 2 to 5 within stipulated time. The only dispute is that in delay in transferring the point No. 1 to the concern PIO of the other public authority. The PIO have tried to give justification and tried to prove that she has acted reasonably and diligently by way of documentary evidence. The entry at serial no. 7131 of inward book reveals that the said plan was received from GSUDA on 24/1/2013 and the entry at serial no. 1958 dated 25/1/2013 reveals that the same was forwarded to Dy. Town Planner Bicholim Goa by the Bicholim, Municipal council. The then PIO Smt Varsha Naik was also

officiating as Chief officer have promptly have forwarded the same to the Town and country Planning Department Bicholim and further She has tried to justified the reasons why she could not transfer the said application to the GSUDA and the Town and country planning department Bicholim. The Justification given in the additional reply cum written synopsis appears to be probable and convincing as the same is supported by the documentary evidence.

19. Section 21 reads as under;

Protection of action taken in good faith;- "No suit, prosecution of other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made there under".

20. Thus Section 21 of the RTI Act, 2005 bars from taking any legal proceeding against any person for anything which is done in the good faith or intended to be done under RTI Act or rule made there under. From the records available in the files it appears that there was no any malafide or ulterior intention in the mind of the Respondent in dealing with the said application. The PIO has shown her bonafides by responding application of appellant well within time thereby furnishing information at pointy no. 2 to 5 and has tried to justify the delay in transferring his application with regards to point no.1.

21. Be that as it may:

Section 20 of the Act reads as Penalties;-1.

"Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer as the case may be, has without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section(1) of section 7 or malafidely denied the request for information or knowingly given incorrect,

incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished so however, the total amount of such penalty shall not exceed twenty-five thousand rupees ”.

22. Thus the Act empowers the commission to levy penalty which involves only the cases at clauses above. The delay in transfer the application is not specified to be a ground for imposing the penalty interms of section 20 of the RTI Act. Even presuming for a while the version of the appellant herein to be true still section 20 of Right to information Act does not confer power on this Commission to levy of penalty on the PIO on ground of delay caused by him in transferring application in terms of section 6(3) to the other public authority.
23. Never the less, the Delhi, High Court in case Registrar of Companies and others V/s Dharmendra Kumar Gard and Another’s writ petition (C)11271/09 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.”

24. Yet in another the Hon’ble Court of Punjab and Haryana in writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another.

“The penalty provisions under section 20 is only to sensitize 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 delay and it is explained, the question will only revolve on whether the explanation is acceptable or not. 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”.

25. In the light of discussion above and considering the provisions of section 20 and 21 of RTI Act,2005 and the ratio laid down by above court, I find that the levy of penalty is not warranted in the facts of the present case. Consequently showcause notice issued on 27/5/2014 and 13/9/2017 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