

GOA STATE INFORMATION COMMISSION

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

Penalty No. 18/2018

In

Appeal No.12/2018/SIC-I

Shri Jesus Victoria,
Add. 28, Khairikatem,
Sanguem- Goa .

....Appellant

V/s

- 1) The Public Information Officer,
Our lady of Fatima High School,
Rivona, Goa.
- 2) First Appellate Authority,
The central Education Zone,
Directorate of Education,
Panaji Goa.

.....Respondents

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

Decided on: 25/04/2018

ORDER

1. This Commission , vide order dated 2/4/2018, while disposing the above appeal, had directed the Respondent no.1 , being then PIO to show cause as to why penalty and disciplinary proceedings should not be initiated against him for not replying the application of the appellant within stipulated time as contemplated under the RTI Act and for delaying the information .
2. In view of the said order passed by this commission, on 2/4/2018 the proceedings stood converted into penalty proceedings.
3. The showcause notice were issued to the PIO on 6/4/2018. In pursuant to the showcause notice, the representative of PIO Shri Peter Siquera was present alongwith Advocate Atish Mandrekar. Reply to show cause notice was filed by PIO on 19/4/2018

alongwith enclosures .The copy of the same was furnished to the brother of appellant.

4. Arguments of both the parties were heard.
5. 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.”

6. 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?.
7. The representative of appellant submitted that the documents produced by the PIO alongwith the reply to the Showcause notice are manipulated. However the said statement was not supported by any convincing evidence .
8. The PIO vide his reply dated 19/4/2018 have contended that three different applications dated 28/8/2017, 29/8/2017 and 30/8/2017 addressed to the PIO of ADEI office at Sanguem was filed by the appellant under the RTI Act which were inturn transferred to them u/s 6(3) by the PIO of ADEI office vide letter dated 31/8/2017 and which were received by him only on 1/9/2017 under inward No. 1339.
9. It is his further contention that he gathered the information and vide his letter dated 26/9/2017 he informed the appellant to collect the information between 3/10/2017 to 4/10/2017 from 11

am to 12.00 p.m. It was contended that the said letter dated 26/9/2017 was sent by ordinary post as such it is their contention that they have reply the appellant within time limit as contemplated u/s 7(1) of RTI Act .

10. It is his further contention that the appellant did not visit their office as such immediately dispatch the information to the appellant vide letter dated 3/10/2017 which was sent by the ordinary post .
11. It is his further contention that appellant preferred first appeal which was dismissed by the first appellate authority without any direction to provide any information to the appellant.
12. It is further contention that appellant has approached this commission with unclean hands with a sole intention to cause harassment to Respondent PIO and to get him penalize by hook or by crook.
13. It is further contention that the appellant has made a false claim that he did not received any reply or information though he duly received.
14. The Respondent PIO in support in his above contention have relied upon the letter dated 31/8/2017 addressed to them by ADEI Sanguem bearing the inward stamp 1339 dated 1/9/2017, the three RTI Applications (i.e dated 28/8/2017 bearing inward stamp of ADEI 320 dated 29/8/2017 , RTI application dated 29/8/2017 bearing inward stamp of ADEI 321 dated 30/8/2017 , RTI application dated 30/8/2017 bearing inward stamp of ADEI 322 dated 31/8/2017), the Xerox copy of the envelop bearing the address of appellant, the reply dated 26/9/2017 given in terms of section 7(1) of the RTI Act, 2005, the outward correspondence register showing the entry at serial no. 3783 of having dispatched the information to the appellant on 26/9/2017

and letter dated 3/10/2017 furnishing the information to the appellant.

15. In the nutshell it is the contention of the Respondent that there was no any delay caused in furnishing the information on their part but rather there are lapses on the part of the appellant to collect the information in time. It was further contended that there was no willful intention on his part either to hold any information or deny the information sought by the appellant . It is further contended that he have acted bonafidely in discharging his duties under the RTI Act .
16. The Delhi High court in writ petition © 11271/09 ; in case of Registrar of Companies and others v/s Dharmendra Kumar Gard and another's has held that;

“ The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the cases of malafides or unreasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that 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 PIO's 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 PIO's 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.”

17. Considering the ratio laid down in above case and also in case of Shri A.A. Parulekar(Supra) ,the explanation given by the PIO appears to be convincing and probable as it is supported by documentary evidence , as such I hold that there are no grounds to hold that information was intentionally and deliberately not provided to him.
18. In the above given circumstances and for the reasons discussed above I am of the opinion that this is not a fit case warranting penalty on the PIO. Consequently showcause notice dated 6/4/2018 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.

Pronounced in the open court.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa