

GOA STATE INFORMATION COMMISSION

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

Penalty Case No. 26/2018
In Appeal No. 105/2018/SIC-I

Raghu Gomes,
GPA 6/3, "A" Type,
Alto Porvorim, Goa-403 521Appellant
V/s

1. Public Information Officer,
Mamlatdar, Tiswadi Taluka, Panaji-Goa
2. First Appellate Authority,
Dy. Collector and S.D.O.,
Tiswadi,
Panaji-Goa Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 13/07/2018

ORDER

1. The Commission while disposing the above Appeal vide order dated 21/06/2018 had directed to issue notice u/s 20(1) of the Right To Information Act, 2005 to the Respondent Public Information Officer (PIO) for contravention of section 7(1) of RTI Act 2005 and for delay in furnishing the information.
2. In view of the said order passed by this Commission on 21/6/2018, the proceedings should converted into penalty proceedings.
3. Accordingly showcause notice were issued to PIO on 26/6/2018.

4. In pursuant to the notice, the PIO Smt. Sapna Bandodkar appeared and filed the reply to showcause notice on 6/7/2018 alongwith supporting documents. The copy of the reply could not be furnished to the appellant on account of his absence. However he was directed to collect the same before the next date of hearing and the matter was then fixed for arguments .
5. Oral arguments were advanced by the respondent PIO Smt. Sapna Bandokar appellant opted to remain absent
6. I have considered the records available in the file and also submission of 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 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?
9. The PIO Smt. Sapna Bandodkar admitted of having received the application dated 22/1/2018 filed by the

appellant u/s 6(1) of RTI Act, however she contended that, by order dated 18/1/2018 she as well and APIO was appointed as Returning Officer and Assistant returning officer, respectively for By election to ward No. 7 of Villange Panchayat Khorlim in Tiswadi Taluka . She further contended that the election work is time bound as reports are sought on day to day basis and that she got completely tide up with all activities concerning elections such as receiving nomination, scrutiny, training to polling personnel, counting preparations, meetings with candidates and observer, visiting and setting up of polling station, dealing with model code of conduct, violation complaints, supervision to printing ballot papers and distributing of election materials etc. In support of her above contention she relied upon letters dated 18/1/2018 issued by Goa State Election Commission (Annexure-B) and letter dated 19/1/2018 issued by Goa state election commission (Annexure-E).

10. It was further contented that beside the election duties she was busy conducting physical inspection of the bunds and sluice gates at the behest of the Collector, North Goa. She further contended that the Assembly session was scheduled and she was busy answering LAQs.
11. She further contended that she was sent for training at new Delhi and the charge was held Joint Mamlatdar IV. She further contended that she was also given additional charge of Mamlatdar in Collectorate and Joint Mamlatdar – I &II since 9/04/2018.

12. It is her further contention that she was deciding cases pertaining to Mundkar Act, Tenancy Act, mutation cases and also cases u/s 133 CRPC.
13. It is her further contention that being a Mamlatdar of Tiswadi Taluka, the maximum Morchas, Strike, Rally takes place in Panajim and she bound to handle the said situation. It was further contended that other magisterial duties such as recording dying declaration, conducting ID period , NDPS drug sampling , recovery of dues, taking possession under SARFAESI cases , answering appeal before appellate court , reporting with respect to illegal structure etc. So also being Mamlatdar is an Administrator of Devasthan under Devasthan Act she was also required to perform such above duties .
14. It was further contended that Mamlatdar also issues various certificates like residence certificate , Diversion certificate, income certificate and dependency certificate which are time bound matters.
15. It was further contended that vide order dated 10/4/2018 (Annexure –L) she was deputed for law and order duty and she was also placed for doing physical verification of EVMs and VVPATs which started from 16/4/2018 till 28/4/2018.
16. In the nutshell it is the case of the Respondent PIO due to holding of above charges she completely lost track and due to genuine difficulty she could not reply to the application and as such no inquiry would be conducted by

their office. It was further contended that no sooner she was aware, the inquiry was conducted and the inquiry report were submitted to the appellant. She further contended that the delay, if any, in providing information is neither deliberate nor intentional but due the factors mentioned by her.

17. The controversy which has arisen here is whether the respondent PIO is liable for action as contemplated under section 20(1) of RTI Act 2005 and whether the delay in furnishing information was deliberate and intentional

18. AIR 2009 Punjab and Haryana page 53, writ petition No. 15288 of 2007, S.P. Arora V/state Information Commission Haryana and others. wherein it has been held at para 8.

“The penalty can be imposed only if there is no reasonable cause for not furnishing the information within a period of 30 days. The word “reasonable” has to be examined in the manner, which a normal person would consider it to be a reasonable the information is required to be supplied within 30 days only if the records is available with the office”.

19. In the present case what was sought by the appellant was action taken by the Mamlatdar of Tiswadi Panaji Goa on the letter dated 20/12/2017 of Additional Collector –I. The said information was sought on 22/1/2018. The Respondent PIO have contended that as on that date that the said letter was not processed and there was a delay in inquiry on the

memorandum dated 20/12/2017 as the Talathi reported sick and he was sanctioned extra ordinary leave without making any alternative arrangement to the said office and she could only appoint Talathi of Sao Mathias with additional charge of Mercedes Soza. It was further contended that the inquiry only could be conducted during the present proceedings and the information is now provided to the appellant. In other words the PIO have informed that there was no any action was taken on the said memorandum of the day of filing application by the appellant. And as such no any information pertaining to the same subject matter was available on the records of the Public Authority. The ratio laid down by the Hon'ble Court in S. P. Arora(Supra) is squarely applicable in the facts of the case as the PIO is supposed to furnish the information as available on the records and it is not expected for him to create the information for the purpose of furnishing the same to the appellant. From the facts of the records it is revealed that at that point of time no information was available on the records of the public authority. The only lapse on the part of PIO is not responding the said application within stipulated time of 30 days . However she has tried the explain the said facts by supporting documentary evidence.

20. The Hon'ble High Court in case of Narendra Kumar V/s the Chief Information Commissioner Uttarakhand, AIR 2014 Uttarakhand page 40, writ petition No. 2730 of 2013, has held at para 8 and 9;

(Para 8) – "information could not be supplied before his transfer for the reasons that entire staff was engaged in the collection of date and preparations of Voters identity Card

under order of Collector and was busy with rescue work after natural Calamities seems to be a reasonable ground for non supplying the information within time.”

“Imposition of penalty on hyper technical ground that information was not supplied within 30 days seems to be totally unjustified and arbitrary”.

21. The PIO herein has established by way of documentary evidence that She was assigned the work of by elections etc, hence the ratio laid down in Narandra Kumar (Supra) is applicable to the facts of the present proceedings.

22. Yet in another case The Delhi High Court writ petition (C)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 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, 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 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.”

23. In Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another, the Hon’ble court held

“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.** I there had been a delay of year and if there was a superintendent, who was prodding the public information officer to act, that itself 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.**”

24. Yet in another decision, the Hon'ble High Court of Punjab and Haryana, Ramesh Sharma and others v/s the State Commission and others decided on 8/2/2008.

has held " if the information is not furnished within the time specified by sub section (1) of section 7 of the Act then under sub section(1) of section 20, Public authority failing in furnishing the requisite information could be penalised. ***It has further held that it is true that in case of intentional delay, the same provision could be invoke but in cases were there is simple delay the commission had been clothed with adequate Powers"***.

25. Hence according to the said judgment penalty u/s (1) of the section 20 could be imposed only in the case where there is repeated failure to furnish the information and that too without any reasonable cause . In the present case PIO have tried to justify the reasons for not responding or not providing the information within 30 days time.

26. The explanation given by the PIO appears to be convincing and probable as the same is supported by the documentary evidence. The authority i.e the Mamlatdar of Tiswadi who is suppose to take action on the said memorandum is also officiating as PIO for the said public authority. There was no time limit fixed by the additional collector in the memorandum dated 20/12/2017. The PIO has tried to explain why the complaint of Shri Raghu Gomes was not processed and further has shown

bonafides by processing the same and furnishing the information to the appellant.

27. By considering the above ratios laid down by various High Courts, I hold that there are no grounds to hold that information was *intentionally and deliberately* not provided to him.
28. In the above circumstances I am of the opinion the levy of penalty is not warranted in the facts of the present case. Consequently showcause notice issued on 26/6/2018 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

Ak/-