

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 45/2018

In

Appeal No. 195/2018/SIC-I

Shri Siddesh Simepurushkar,
r/o Flat No. 2, Ananta Appt,
Angodwada, Mapusa,
Goa.

.....Appellant

V/s

1. Public Information Officer,(PIO)
Administrator of Comunidade,
(North Zone), Mapusa,
Bardez Goa.

.....Respondents

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

Decided on: 8/11/2018

ORDER

1. This commission Vide order dated 8/10/2018, while disposing the above appeal directed PIO to comply with the order passed by the First appellate authority dated 30/7/2018 and to provide point wise information to the appellant as sought by the appellant vide application dated 7/5/2018, within the 20 days from the date of the receipt of the order by him. Vide said order also the PIO was directed to showcause as to why penal action as contemplated u/s 20(1) and 20(2) should not be initiated against him or her for not responding the application within 30 days of time as contemplated under section 7(1)of RTI Act 2005 and for not complying the order passed by Respondent no. 2 FAA and for delay in the information .
2. In view of said order passed by this commission on 8/10/2018, the proceedings should converted into penalty proceedings .
3. In pursuant to the said order showcause notice was issued to then PIO on 9/10/2018 .

4. In pursuant to the said Showcause notice, the PIO Shri Gaurish Shankhwalkar appeared. During the penalty proceedings, the appellant was also present.
5. The PIO on 8/11/2018 furnished the appellant the information and also filed reply to showcause notice along with enclosures . The copy of the same was furnished to the appellant .
6. On verification of information , the appellant submitted that he is satisfied with the information furnished to him by the PIO and therefore has no any grievance against PIO and hence not pressing for penal provisions. Accordingly he endorsed his say on the last page of reply filed by the PIO.
7. I scrutinize the records available in the file and also considered the submission made by both the parties .
8. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005:-
 - a. 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.**"*
 - b. The Delhi High Court, in 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."

- c. Yet 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.**"

d. 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".

9. Hence according to the said judgments penalty under sub-section (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 .
10. 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?**
11. The respondent PIO have admitted of having received the application of the appellant dated 7/5/2018 seeking information on 5 points as mentioned in the application. The PIO faely admitted delay in responding the same. However it is his case that it was not intentional. Vide reply he submitted that on receipt of the application of the appellant, he sought the assistance of the dealing hands namely Ramesh Tulaskar and Smt. Vaibhavi parab for issuing necessary information to the appellant. However it is his case that dealing hand did not adhere to his instruction and information was not made available to him for onward submission to the appellant.

12. It is also his contention that the concerned dealing hand did not also bring to his notice about the 1st appeal filed by the appellant, neither furnished information as such a memorandum dated 31/10/2018 was issued to both the above named dealing hands seeking explanation in respect of failure on their part to discharge their duty under RTI Act and they have offered the explanation. The copy of the memorandum, the replies of both the dealing hands and the affidavit sworn by Shri Ramesh Tulaskar was enclosed to the said reply
13. It is his further contention that he was holding main regular charge of Dy. Collector and sub-divisional Magistrate of Bardez taluka and was holding additional charge of office of Administrator of Comunidade ,Bardez and due to the heavy work at Dy. Collector office, he could not keep a track and issue the information within stipulated time due to oversight.
14. Hence it is the case of the respondent PIO that there was no willful intention on his part to refuse the information and the delay if any was on account of the lethargic attitude of the staff of Administrator of Comunidade office. It is his further case that there is no evidence of malafide denials of information in order to attract the penalty. The PIO also gave assurance that in future the application filed under RTI Act will be disposed in time bound manner and also sought for a lenient view.
15. The dealing clerk Shri Ramesh Tulaskar vide his affidavit have admitted of allotting him responsibility of issuing the information under the RTI Act and also attending the first appeal and the second appeal under the RTI Act. He further contended that due to additional charge of Comunidade of Mapusa, Colvale, Narve, Pilgao, Vaiganim, it might have skipped from his compilation and the information was mistakenly not issued to the appellant.
16. The reply given by the PIO appears to be convincing and probable as the same is supported by documentary evidence more

particularly the affidavit of dealing hand Shri Ramesh Tulaskar. It does not appear that PIO was negligent in his duty under the RTI Act. considering the peculiar circumstances and the facts of the present case and subscribing to the ratios laid down by the above courts, I am of the opinion that for the fault and lapses on the part of the dealing clerk the PIO cannot be made scapegoat and cannot be solely held responsible .

17. In view of above, I hold that the levy of penalty is not warranted in the facts and the circumstances of the present case consequently the showcasue notice issued to PIO Shri Gaurish Shankhwalkar on 9/10/2018 stands withdrawn.

Penalty proceedings stands closed

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Sd/-

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