

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 47/2018

In

Appeal No. 200/2018/SIC-I

Shri Jawaharlal T. Shetye,
H.No.35/A,
W. No-11,
Khorlim Mapusa Goa.
Pincode-403 507

....Appellant

V/s

1) The Public Information Officer (PIO),
The Administrator of Comunidade (North)
Administration of Comunidades (North Zone),
Mapusa Goa-403507

2) First Appellate Authority (FAA),
Additional Collector II,
Collectorate of North Goa District,
Panaji Goa-403 001.

.....Respondents

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

Decided on: 13/11/2018

ORDER

1. This Commission Vide order dated 15/10/2018, while disposing the above appeal directed PIO to comply with the order passed by the First appellate authority dated 24/5/2018 and to provide point wise information to the appellant as sought by the appellant vide application dated 1/2/2018, 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 15/10/2018, the proceedings should be converted into penalty proceedings .
3. In pursuant to the said order showcause notice was issued to the PIO on 17/10/2018 .
4. In pursuant to the said showcause notice, the PIO Shri Gaurish Shankawalkar appeared and filed his reply on 13/11/2018 along with the enclosure . Appellant opted to remain absent and as such the copy of the reply of PIO alongwith enclosure could not be furnished to him.
5. Arguments were advanced by PIO.
6. I scrutinize the records available in the file and also considered the submission of the Respondent PIO .
7. 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 take 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 where there is simple delay the commission had been clothed with adequate Powers".

8. Hence according to the said judgments penalty under sub-section (1) and sub- section (2) of section 20 of RTI Act, 2005 could be imposed only in the case where there is repeated failure to furnish the information and that too without any reasonable cause .
9. 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 delay in furnishing information was **deliberate** and **intentionally?**
10. In the present case the respondent PIO have admitted of having received the application of the appellant dated 1/2/2018 and also fairly admitted delay in responding the same. However it is his case that it was not intentional . vide reply the PIO submitted that on receipt of the application , he sought the assistance of clerk of Comunidade of Cunchelim as the information was in their custody and he vide letter dated 23/2/2018 made a written request to Escirao /clerk of said Comunidade directing him to supply the said information to his office within 3 days . However it is his case that Escirao/clerk of said Comunidade did not adhere to his instruction and information was not made available to him for onward submission to the appellant.
11. It further contention of respondent PIO that during the proceedings before the FAA, the clerk of the Comunidade vide letter dated 18/5/2018 submitted the information with the inward section of

the Office of the Administrator of Comunidade North Zone which was inwards vide entry No. 1357 dated 21/5/2018 and which was placed before him on 23/5/2018 . It was further submitted that he was not able to place said fact before the FAA as the matter was disposed by FAA on a next day itself.

12. It is further contention of Respondent PIO that the order of the FAA dated 24/5/2018 was complied by him and the information was furnished to the appellant vide his letter dated 7/6/2018 by register post and in support of his said contention he placed on record the supporting documents i.e a letter dated 7/6/2018 addressed to the appellant by him forwarding the information, letter dated 18/5/2018 addressed to the administrator of Comunidade by the clerk of Comunidade of Curchorim submitting the said information and the Xerox copy of the postal acknowledgment of having appellant received the information on 9/6/2018 .
13. It is further contention of the Respondent PIO that the notice of the second appeal was not brought to his notice by the dealing clerk as such he could not appeared before this commission and putforth his case . He tendered his unconditional apology for the same and further submitted that the order of this commission has been also complied by him and information was resubmitted/ refurnished to the appellant once again.
14. In the nutshell it is his case that the order of the FAA and this commission have been duly complied by him and the delay in not responding the application of the appellant was unintentional as the information was not available with him and he made all efforts in securing the same.
15. 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 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.

16. The Hon'ble High Court of Bombay at Goa in writ petition No. 704/12 public authority V/s Yashwant Sawant has held that at para 6;

“ The imposition of such penalty is a blot upon the career of the officer at least to some extent, in any case the information ultimately furnished though after some marginal delay in such circumstances, therefore, no penalty ought to have been imposed upon the PIO”.

17. The Honble High court of Bombay at Goa in writ petition No.488/11; Shivanand Salelkar v/s Goa state Information commission has held at para 5

“ The delay is not really substantial . the information was applied on 26/10/2009 and therefore the information had to be furnished by 25/11/2009. On 30/11/2009 complainant made his complaint and no sooner the petitioner received the notice of complaint, the petitioner on 15/1/10 actually furnished the information. If all such circumstances considered cumulatively and the law laid down by this court in the case of A A Parulekar (supra) is applied , then it does appears that there was no justification for imposing penalty of Rs 6000/- against the petitioner. “

18. In writ petition No. 15288 of 2007 , S.P. Arora V/state Information Commission Haryan and others AIR 2009 PunJab and Haryan page 53,. 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 with in 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 a present case I find that reply given by the PIO appears to be convincing and probable as the same is supported by the documentary evidence. There was no denied from his side in providing the information. He had made all the efforts in securing the said information as the same was not in his possession. The PIO, also no sooner he received the information from Escirao/clerk of said Comunidade has provide the said information to the appellant herein. Further the PIO herein has also tried to justified the circumstance leading to such delay in not responding applicants application within stipulated time of 30 days interms of section 7(1) of RTI Act.
20. In view of ratios laid down by the various above High courts and in view of above discussion, I am of the opinion that this is not a fit case warranting levy of penalty on the PIO. Consequently the show cause notice dated 17/10/2018 issued to PIO Shri Gaurish Shankawalkar 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