

GOA STATE INFORMATION COMMISSION

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

Penalty No. 47/2017

In

Appeal No.35/2017

Shri Jawaharlal T. Shetye,
H.No. 35, ward No. 11,
Khorlim Mapusa Goa.

..... Appellant

V/s.

1. Public Information Officer(PIO),
Dy. Collector and SDO Mapusa Bardez,
Mapusa Bardez Goa.

2. The First Appellate Authority,
Additional Collector I,
Panaji Goa.

.....Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 02/01/2018

ORDER

1. This Commission , vide order dated 16/10/2017, 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 refusing to furnish the information to the appellant. In view of the said order passed by this commission, on 16/10/2017 the proceedings stood converted into penalty proceedings.
2. The Showcause notice were issued to then PIO Shri Chandrakant Shetkar on 25/10/2017 and 7/11/2017. In pursuant to the notice the then PIO Shri Chandrakant Shetkar appeared and filed his

reply on 12/12/17 and also placed on record the extract of outward registered of 20/2/2017 in support of his contention.

3. The copy of the same was furnished to the appellant.
4. The then PIO Shri Chandrakant Shetkar vide his reply dated 12/12/2017 have contended that at the relevant time when he received the RTI Application dated 3/1/2017 of the Appellant, the election commission of India had appointed him as a returning officer for 06-Siolim and 07- at Saligao Assembly constituency apart from his regular duty as Deputy collector and SDO Mapusa. He further contended that he was overall in charge of maintaining law and order for the smooth conduct of election process in respect of Bardez Taluka. As such it is his contention that the delay caused in responding RTI application to the applicant is not intentional or deliberate but due to being pre-occupied with the process of the election work.

He further contended that the APIO of the office of Dy. Collector and SDO Mapusa- Bardez, Goa at the relevant time also holding the additional charge of the office of Mamlatdar of Sattari Taluka. Thus the delay if any was caused in furnishing the desired information to the appellant was purely on account of Administrative difficulty and due to the election time bound work.

5. In the nutshell It is the contention of the Respondent that there was no willful intention on their part to refuse the information and that he have acted bonafidely in discharging his duties under the RTI Act and the delay in responding the said application was on account of process of general election to Goa Legislative Assembly, 2017.
6. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005

7. 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."

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. In a present case the contention of then PIO Shri Chandrakant Shetkar that he was holding main regular charge as Dy. Collector and SDO Mapusa Bardez. and subsequently was appointed as returning officer for Siolim and Saligao constituency and that he was required to maintain law and order for the smooth conduct of election process in respect to Bardez Taluka has been admitted by the appellant herein. As such I hold that the he had no absolute control over the administration of the Public Authority concerned herein and that he had to also impart his duties elsewhere simultaneously.

10. The Hon'ble High Court of Bombay at Goa in writ petition No. 704/12 public authority V/s Yashwant Sawant which was decided on 08/05/2017 has held 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".

11. Yet in another decision high court of Punjab and Haryana at Chandigarh in civil w.p. No.6504 of 2009 ; state of Punjab v/s state information commissioner has held at para 3;

“The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and no hold up information which a person seeks to obtain. ***It is not every delay that should be visited with penalty. If there is a delay and it is explained the question will only revolve on whether the explanation is acceptable or not .*** if there had been a delay of a year and if there was a superintendent, who was prodding the Public Information officer to act, that it self 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 second respondents has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified”.***

12. 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 appear that there was no justification for imposing penalty of Rs 6000/- against the petitioner. ”

13. 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.”

14. Considering the above ratio and also the ratio laid down in case of Shri A.A. Parulekar ,the explanation given by the PIO appears to be convincing and probable , as such I hold that there are no grounds to hold that information was intentionally and deliberately not provided to him.

15. Consequently the Showcause notice dated 25/10/2017 and 7/11/2017 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.

Pronounced in the open court.

Sd/-

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