

GOA STATE INFORMATION COMMISSION

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

Penalty No. 50/2017

In

Appeal No.133/2015

Shri Kalpesh Kavlekar,
R/o. H. No. 203, Sorvem Wado,
Near Government High School,
Namoshim Gurim Bardez-Goa Appellant

V/s.

1. Shri Dashrath Redkar (Then PIO)
Administrator of Comunidade,
North Zone, Mapusa GoaRespondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 08/01/2018

ORDER

1. This Commission, vide order dated 25/10/2017, while disposing the above appeal, had directed the Respondent no.1 , being then Public Information Officer (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 Right to Information Act 2005 and for refusing to furnish the information to the appellant. In view of the said order passed by this commission, on 25/10/2017 the proceedings stood converted into penalty proceedings.
2. The showcause notice were issued to then PIO Shri Dashrath Redkar on 30/10/2017. In pursuant to the notice the PIO Shri Dashrath Redkar appeared and filed his reply on 12/12/17 and also additional reply came to be filed by him on 21/12/2017 .

3. The copy of the same could not be furnished to the appellant as appellant opted to remain absent for the present penalty proceedings .
4. The then PIO Shri Dashrath Redkar vide his reply dated 12/12/2017 have contended that at the relevant time he was holding additional charge as Administrator of Comunidade North Zone so also additional charge as Assistant Director (Admn) in the office of Director of Craftsmen and training with regular charge as Dy. Director Panchayat. He also contended that he was also given regular charge as under secretary cum registrar of Goa state Information commission vide order dated 8/7/2015 . He further contended that the officer of Comunidade North Zone Mapusa was flooded with RTI Application and the dealing hand Baldomira could not process the application of the appellant in time. It is his further contention that the information could not be furnish to the appellant due to the lethargic attitude of dealing hand and as such it is his contention that he cannot be held responsible for the act of dealing hand. It is his further contention that PIO cannot be held responsible for the information held by the another authority. It is the further case that once the information furnished to the applicant as per the directives of FAA, the question of imposing penalty and disciplinary action does not arise. He further contended that at the relevant time there were only four staff attached to the office of administrative of comunidade and the said office had jurisdiction of four talukas namely Bardez, Bicholim, Pernem and Sattari and with limited staff it was difficult to handle such big office. In support of his above contention he has relied upon orders dated 8/7/2015 and dated 16/11/2015 .
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 dealing hand.

6. 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."

7. 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?

8. On perusal of the records it is seen that the entire defense of the PIOs is resting on the contention that he was holding main charge else where as and that he was given additional charge of Administrator of Comunidade , North Zone which is the public authority concerned herein and he was officiating in such a big office with limited staff .

9. In a present case the contention of then PIO shri Redkar that he was holding main regular charge as Dy. Director of Panchayat and subsequently was given main charge as under secretary cum registrar of Goa state Information commission and that he had been given additional charge of Administrator of Comunidade North Zone and of Assistant Director (Admn) in the office of Crafts men and Training, the said fact is not disputed by the appellant herein and the said is also supported by the documentary evidence as such I find that as then PIO had additional charge of the public authority involved herein was in

addition to his regular charges as such he had no absolute control over the administration of the same and he had to also impart his duties elsewhere simultaneously.

10. 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.”

11. 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.

12. However before parting I would like to make observation that the reply given by the PIO in terms of section 7, appears to have been given in casual manner . In the present case, it is also the contention of the PIO that the information is not directly held by PIO and is available in Comunidade. However there is nothing placed on record by the PIO showing that a correspondence was made by him with the said Comunidade calling upon said information from them or that any action was taken against the dealing hand for dereliction of the duties by the PIO. Such an conduct on the part of the Respondent PIO is condemnable and against the spirit of the RTI Act. However as there is nothing brought on record by the appellant that the lapses on the part of the PIO is persistence, a lenient view is taken in the present matter and the then PIO is hereby directed to be vigilance henceforth while dealing with the RTI matters and any future lapses will be viewed Strictly.

13. 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