

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 01/2018
In
Appeal No.163/2017

Engineer Rabindra A.L. Dias,
Dr. Pires Colony, Block "B",
Cujira, St. Cruz, Tiswadi Goa.

.....Appellant

V/s.

1. Public Information Officer (PIO),
O/o, The Village Panchayat Sernabatim, Vanelim,
Colva, and Gandaulim,
Colva Salcete Goa.

2. The First Appellate Authority (FAA),
O/o The Block Development Officer,
Mathany Saldanha Administrative Complex,
Margao Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner.

Decided on: 20/02/2018

ORDER

1. This Commission vide order dated 19/01/2018, while disposing the above appeal directed to then PIO to Showcause as to why penal action as contemplated u/s 20(1) and 20(2) of the Right to Information Act, 2005 should not be initiated against her for contravention of section 7(1) of RTI Act 2005 and for delay in furnishing the information and for not complying the order of FAA.
2. In view of said order passed by this commission on 19/01/2018, the proceedings should converted into penalty proceedings .
3. In pursuant to the said order showcause notice was issued to then PIO on 23/1/2018.
4. The Then PIO Smt. Sandhya Shirodkar appeared and filed her reply on 9/2/2018 along with enclosures. The copy of the same could not be furnished to the appellant on account of his absence.

5. 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."

6. 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?

7. I have perused the records available in the file so also considered the submissions made by Respondent PIO.

8. Vide said reply PIO contended that as appellant had not furnished her the names of the owners, as such she was unable to furnish information. It was further contended that fact was brought to the notice of appellant in her reply dated 22/6/2027 filed before the FAA It was further contended that she was not present when the order was passed by the FAA as she was busy with the agriculture census and was also with the work of preparing election roll as such it is her contention that she was not aware of the order of FAA .She further contended that she was transferred from V.P. Colva to V.P. Ambelim on 28/9/2017.

9. In the nutshell, it is the contention of the Respondent PIO that there was no willful intention on her part to refuse the information and that she have acted bonafidely in discharging her duties under the RTI Act.

10. Honble 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 .***

11. 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.”

12. 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

“unless and until it is borne on record that any office against whom order of penalty for failure to be sought to be levied and has occasion to comply with a order , and has no explanation or excuse available worth satisfying the forum, possessing the knowledge of the order to supply information, on order of penalty cannot be levied”.

13. The explanation given by the PIO appears to be convincing and probable as the same is supported by the documents . The letter dated 12/6/17 which is relied by the appellant also does not bear any acknowledgment or the stamp of the office of respondent of having received the same .No clarification could be sought from appellant on account of his absence as such I have no hesitation in accepting the version of PIO. Further from Roznama of the proceedings of Respondent No.2 First appellate authority of 19/7/2017, it could be gathered that Respondent PIO was not present when the order was passed by the first appellate authority. There is nothing placed on record by Respondent No. 2 First appellate authority or by appellant that said order was communicated to then PIO, as such 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.
14. I am of the opinion that the levy of penalty is not warranted in the facts of the present case. Consequently showcause notice issued on 25/1/2018 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/-