

GOA STATE INFORMATION COMMISSION

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

Penalty 14/2018
In
Appeal No. 07/2018/SIC-I

Shri Shrikant Naik Simepurushkar
R/o. Flat No. F2,
Ananta Apartment, Angod Waddo,
Mapusa, Bardez-Goa

....Appellant

V/s

1) The Public Information Officer,
Administrator of Comunidades (North Zone),
Mapusa Bardez-Goa

.....Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 30/04/2018

ORDER

1. This Commission, vide order dated 15/3/2018, while disposing the above appeal, had directed the Respondent no.1 , being then PIO to show cause as to why penalty should not be initiated against him for not responding the application, and for not complying the order of first appellate authority .
2. In view of the said order passed by this commission, on 15/3/2018 the proceedings stood converted into penalty proceedings.
3. The showcause notice were issued to the then PIO, on 16/3/2018. In pursuant to the said notices then PIO Shri Rohan Kaskar and present PIO Shri Gaurish Shankawalkar appeared .
4. Reply filed by Shri Gaurish Shankawalkar on 20/4/2018, The copy of the same was furnished to the appellant. Shri Rohan Kaskar filed his reply on 26/4/2018 however the copy of the

same could not be furnished to the appellant on account of his absence.

5. Vide above reply the then present Shri Gaurish Shankawalkar have contended that he was not officiating as PIO when the application made by the appellant as he had taken the charge as Administrator of Comunidade only on 22/11/2017. He further contended that the details of the application filed under the RTI Act and the appeal preferred by the applicant was also not maintained by his predecessor and that the dealing hand of the Administrators office also did not bring the same to his notice. He further contended that the first appeal preferred by the appellant was also not brought to his notice by the dealing hand. He further contended that the same thing could be revealed from the order passed by the first appellate authority where Respondents have gone as unrepresented. It was further contended that upon the receipt of the order of the first appellate authority he had issued necessary instruction to the clerk of Comunidade and vide letter dated 15/3/2018 he provide the information. However nothing documentary evidence have been placed on record by him substantiating that the necessary instructions were issued to the clerk of Comunidade. Records reveals that the order was passed by the first appellate authority on 20/12/2017 thereby directing the PIO to furnished information within 15 days. The information came to be furnished to the appellant only on 15/3/2018 before this commission. There is a delay in complying the order of first appellate authority by the Respondent PIO Shri Gaurish Shankawalkar.
6. The then PIO Shri Rohan Kaskar vide his reply, have admitted that he was officiating as PIO when the application u/s 6(1) was made by the appellant and have submitted that Administrator office lacks in man power and there are only two clerk who has to look in different mater from court cases to functioning of office

and inspection. He further contended that he had sought the information from the clerk of Assagao Comunidade u/s 5(3) of the RTI Act, 2005. However his said statement is not supported by any documentary evidence.

7. In the nutshell, it is the contention of both the Respondent PIO that there was no malafide intention in delaying the information to the appellant and the said was due to the reasons stated in their reply. Both the Respondent PIO requested to lenient action.
8. I have scrutinize the records available in the files and also considered submission made on behalf of PIO.
9. The Respondent PIOs have courageously admitted the lapses on their part and has tried to explain the said error on their part.
10. Admitably there is a delay in furnishing the information . However there is nothing on record to show that it was intentionally and deliberately.
11. 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. Yet in case of Shri A. A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007) the Hon’ble High Court of Bombay, Goa bench has observed:

“ The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate.”

13. The ratio laid down in above cases is applicable to the facts of the present case as there is no sufficient and convincing evidence on record to show that the Respondent PIOs knowingly, intentionally and deliberately delayed in furnishing the information .

14. However the PIOs should always keep in mind that their services are taken by the Government to help the people of state in particular and people of country at large and the objective and purpose for which the Act came into existence. If the PIO had given prompt and correct information at the initial stage itself, such and harassment and detriment to the appellant could have avoided.

15. Since there is nothing on record that such lapses on the part of the respondent PIO is persistent, and by considering unconditional apology tendered by the PIO Shri Rohan Kaskar, a lenient view is taken in the entire matter and the PIOs are hereby

directed to be vigilant hence forth while dealing with the RTI matter and lapses if any found in future shall be viewed seriously.

With the above directions 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/-