

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 21/2018

In

Appeal No.50/2018/SIC-I

Kum. Piedade F. D'Souza,
HNo. 1193,
Anna Vaddo , Ximer,
Candolim Goa .

....Appellant

V/s

- 1) The Public Information Officer,
Office of the Village Panchayat,
Candolim, Bardez Goa.
- 2) First Appellate Authority,
Block Development Officer,
Mapusa Goa .

.....Respondents

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

Decided on: 31/10/2018

ORDER

1. This commission Vide order dated 3/5/2018, while disposing the above appeal directed to PIO to Showcause as to why penal action as contemplated u/s 20(1) of the Right to Information act 2005 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 3/5/2018, the proceedings should converted into penalty proceedings .
3. In pursuant to the said order showcause notice was issued to then PIO on 9/5/2018 . No specific names of erring PIO's were provided by the appellant to this commission.

4. Penalty proceedings are between court and the contemnor, and the appellant cannot as a matter of right claim audience in the penalty proceedings, however in the interest of justice, an opportunity was afforded to the appellant to put forth her case.
5. Appellant was represented by Advocate Ketki Pednekar. Advocate Parikshit Sawant appeared on behalf of then PIO Shri Rui Cardoz and filed his reply on 16/7/2018 and additional reply on 5/10/2018 to showcause notice dated 9/5/2018 and also filed his affidavit on 24/10/2018 alongwith supporting documents . Copy of the same was finished to the appellant .
6. Oral arguments were advanced by both the parties.
7. Respondent PIO admitted of having received the application of the appellant dated 20/6/2017 so also fairly admitted the delay in responding the same. However it is the case of the PIO that the same was not intentional. It was contended that the then PIO Shri Rui Cardoz was holding additional duties as Secretary and PIO at Candolim Village Panchayat besides holding main charge as Secretary and PIO at Village Panchayat at Arpora. He further submitted that PIO was piled with up heavy work in both the Panchayat and in the month of may to July 2017 the PIO had received 25 application under RTI Act 2005 and which was marked to concerned office clerk in order to verify the information and submit the report. It is his further contention that vide those application the information seeker had sought voluminous information and therefore the reply to the application of the appellant remained to be given within 30 days. It was further contended that the clerk of the Candolim Panchayat had kept the said application along with other office correspondence and the said was not brought to his notice by the said dealing clerk as such he could not respond the same within 30 days.
8. It is his further contention on receipt of the notice of the first appellate authority, he vide letter dated 22/8/2017 furnished the information to the appellant.

9. It is his specific case that when the order was passed by FAA on 12/1/2018 , he was not officiating as PIO of Village Panchayat Candolim so also when the second appeal was filed before this commission by the appellant as he was relieved vide order dated 9/1/2018. In support of his said contention he placed on record relieving order dated 9/1/2018 issued by the Block Development Officer-I Bardez, Mapusa-Goa. Advocate for the respondent PIO submitted that the dealing clerk at the relevant time have been transferred and on account of his transfer he could not placed on record his affidavit.
10. In the nutshell it is the case of respondent PIO that due to the holding of above charges he completely lost track and due to genuine difficulties he could not reply to the application within 30 days time and the said was not intentional.
11. Advocate K. Pednekar submitted that plea of additional charge is just taken by the PIO to cover up dereliction of his duties. She further submitted that grounds taken by the PIO are not true as there is no single communication on records placed by the PIO that he was not able to handle both the Panchayat nor any data have been placed on record by the PIO to show that the voluminous RTI application were by received by him during that period. She further submitted that the PIO should not mechanically forward the information collected through his subordinate and should apply his mind independently and should take appropriate decision. In support of her above contention she cited the decision given by the Hon'ble High Court of Delhi in writ petition (c) 7232/2009 ; J.P. Agarwal V/s Union of India. She further submitted that there is no provision under RTI act which empower the commission to either reduce or enhance penalty and in support of her above contention she place reliance on the decision given by the High Court of Calcutta in writ petition (c) 18653 (w) of 2009 : Mehab Kumar

Bandhopadhaya V/s the State Chief Information Commissioner and
(ii) The decision given by the High Court of Himachal Pradesh at
Simla in civil writ petition No. 640 of 2012/D ; Sanjay Hindwan V/s
State information Commissioner .

12. 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 akin 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 were there is simple delay the commission had been clothed with adequate Powers***”.

13. Hence according to the said judgments penalty under sub-section (1) of the section 20 could be imposed only in the case where there is repeated failure to furnish the information and that too without any reasonable cause .
14. 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**?**
15. In the present case the contention of then PIO that he was holding main charge at Village Panchayat of Arpora and that he had given additional charge of Village Panchayat of Candolim is supported by the documentary evidence and the said fact is also not disputed by the appellant herein. Considering the above circumstances, I find that as then PIO had charge of Public authority involved herein was in addition to his regular charge at Village Panchayat Arpora, as such he had no absolute control over the administration of the same as he had to also impart his duties as else where simultaneously. Section 7(1) of the act envisages a clear period of 30 days at the disposal of PIO to furnish or to dispense information. As PIO herein was holding additional charge the period had to be shared by him for his duties to other authorities as such he did not get complete 30 days working at Village Panchayat of Candolim.
16. In the present case PIO have fairly admitted of not replying within 30 days and tried to justify the reasons for not responding or not providing the information within 30 days time. It is an admitted fact the appellant had received the reply of PIO dated 22/8/2017. It is also admitted fact that the said reply was given by the PIO no sooner the receipt of the notice of the first appeal bearing No. BDO/BAR/RTI/67/16 was received by the Respondent. On perusing of the said reply dated 22/8/2017 of the Respondent PIO it is seen that he has given point wise replies to all the queries/points as sought by the appellant. The bonafides have been shown by the PIO

in furnishing the information during the first appeal proceedings itself.

17. 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”.

18. Yet in another decision 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. ”

19. The ratio laid down by the above courts are squarely applicable to the facts of the present case. The PIO has furnished the point wise information no sooner he received the notice of the first appellate authority. There was no denial from his side in providing information. There is a marginal delay in responding the application. The bonafides have been shown by the PIO in furnishing the point wise reply and has tried to justify the circumstances leading to such delay.

20. From the facts on the records, it appears that appellant is trying to blow hot and cold at the same time. It is his own case that after the receipt of the reply from the PIO dated 22/8/2017, the first appeal bearing No. BAR/RTI/67/2016-17 was withdrawn by the appellant. It is not the case of appellant that he has withdrawn it conditionally thus having withdrawn the same, the appellant cannot reagitate the same point again.
21. When the order dated 12/1/2018 passed by the first appellate authority in appeal No. BDO-BAR/RTI/85/2017 thereby directing PIO to furnish the information, the then PIO Shri Rui Cardoz was not officiating as PIO of Village Panchayat Candolim and hence he cannot be held responsible for not complying the order of first appellate authority and or that for not fully giving him information.
22. The onus is on the party to prove the facts averred by them. Though the appellant during argument submitted that the PIO has merely forwarded the information without proper application of mind, but failed to exhibit and/or did not substantiate the same by way of any cogent and convincing evidence. As such the decisions relied by the appellant in the case of J.P. Agarwal (Supra) does not come to his rescue and the same cannot be applied in the facts and the circumstances of the case in hand. The other two judgments relied by the appellant will apply only in case if the commission comes to the conclusion that there was a malafide intention in delaying the information. Further, those judgments also doesn't come to the help of appellant as the Hon'ble High Courts has also held that if the commission comes to the conclusion that there are reasonable grounds for delay or the Public information officer concerned are satisfactory explain the delay then no penalty can be imposed.
23. I find that the replies and the explanation given by the PIO appears to be convincing and probable as the same is supported by documentary evidence. The appellant also miserably failed to exhibit

by way of cogent and convincing evidence that the delay in furnishing the information or not responding the application was intentional and with malafide motives by the PIO and the reply dated 22/8/2017 was submitted without application of mind.

24. 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 9/5/2018 issued to then PIO Shri Rui Cardoz 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