

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

**Review Application No. 06/2017
In Penalty No. 06/2017
In Appeal No.198/SIC/2012**

Dr. (Ms) Kalpana V. Kamat,
Caldeira Arcade , 1st floor,
Bhutebhat Vasco Goa

..... Appellant.

V/s.

1.Public Information Officer,
Marmugao Muncipal Council,
Vasco-Goa

2.The First Appellate Authority,
Director of Municipal Administration,
Panaji-Goa.

....Respondents.

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 26/02/2018

ORDER

1. The Commission vide order dated 14/11/2017 while disposing the above penalty case directed the then Public Information Officer (PIO), Shri Agnelo Fernandes to pay sum of Rs. 2000/- as penalty for not complying the order of First Appellate Authority (FAA).
2. The order was passed in the said penalty proceedings after giving opportunities to then PIO to file appropriate reply. In the said penalty proceedings the then PIO was represented by Advocate V. Pednekar
3. After passing of this order, an application for review of order dated 14/11/2017 came to be filed by then PIO Shri Agnelo

Fernandes on 6/12/2017. The said application was supported by the affidavit of then PIO Shri Agnelo Fernandes and that of Advocate Vithoba V. Pednekar.

4. Appellant was notified. Copy of the review application and the affidavits were furnished to the appellant. Arguments were heard on the said review application.
5. It is the case of PIO that due to some unavoidable personal difficulties of Advocate, he could not appear before this Commission and as such could not file reply to showcause notice issued to him. It was further contended that due to certain Job pressure, Advocate lost the total track of the penalty proceedings and Advocate could not communicate to then PIO.
6. In the above background, it was felt by this Commission that for the fault of the lawyers/Advocates, the parties should not suffer. The Principal of natural justice also demands that party should be heard before imposing penalty. Hence this Commission granted the review application and opportunity to then PIO was given to put forth his case.
7. Vide reply dated 6/12/2017 the then PIO Shri Agnelo A. G. Fernandes contended that he after the order of first appellate authority dated 22/11/2012, got verified the records of the information pertaining to queries at Sr. No. 13 and 14 of RTI application and the said was untraceable and as such he accordingly informed the appellant vide his letter dated 10/12/2012. It was also further contended the application of the appellant filed under section 6(1) of the RTI act dated 13/08/2012 was promptly responded on 5/09/2012. It was

further contended that after 19/04/2013 as he was transferred to the passport Department he could not keep any track in the said matter and the Advocate representing him Mr. Khilgee had filed reply dated 6/08/2014 without consulting him.

8. In the nutshell it is contention of the respondent then PIO that he has acted diligently and had taken all the steps to provide information to the appellant based on the information available on record.
9. The said reply was also supported by letter dated 5/09/2012 and 17/09/2012 which was addressed to the appellant and the said was bearing signature of the appellant of having acknowledge the said information. On perusal of the letter dated 17/09/2012 it could be gathered that information at point No. 13 and 14 i.e. house tax receipt from 2005 to 2011 were enclosed and it is informed that receipt from 1990 were not available since the installation of computer was from the year 2005. The exhibit 'C' i.e. letter dated 10/12/2012 reveals that PIO had intimated appellant that the information pertaining to query No. 13 and 14 was not available despite of making sincere efforts to trace the file. The said facts have been reiterated by him by supporting affidavit.
10. From the records it could be seen that the part of the information pertaining to point no. 13 and 14 was furnished by then PIO at initial stage itself vide letter dated 17/09/2012. He also has taken further steps and tried to trace the said information and since it was not available, he has intimated the same to the appellant on 10/12/2012. It appears from the records that then PIO has taken efforts to comply the order of FAA.

11. Hon'ble High Court at Bombay at Goa Bench at Panaji in case of Shri A. A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007) has observed:

*"11. 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.**"*

12. 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."*

13. 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.
14. In the above given circumstances and for the reasons discussed above I am of the opinion this is not a fit case warranting penalty on then PIO Shri Agnelo Fernandes. Consequently showcause notice dated 26/12/2017 stands withdrawn.
15. The order dated 14/11/2017 passed by this Commission in penalty proceedings 6/2017 stands recalled.

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

Kk/-