

**Review Application No.07/2017
In Penalty No.07/2017
In Appeal No.160/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: 03/08/2018

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. As no reply was filed by then PIO and as sufficient time has since lapsed this commission felt it appropriate to dispose the penalty proceedings on the material available in the records.
4. 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 8/12/ 2017 before this commission, which was inwards vide entry

No. 2720 dated 11/12/2017. The said application was supported by the affidavit of then PIO Shri Agnelo Fernandes and that of Advocate Vithoba V. Pednekar.

5. Appellant was notified. Copy of the review application and the affidavits were furnished to the appellant. Arguments were heard on the said review application.
6. 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.
7. 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.
8. Vide reply dated 26/07/2018 the then PIO Shri Agnelo A. G. Fernandes contended that the application dated 14/5/12 of the appellant was responded by APIO Mrs Maria Alva Furtado on 13/6/12 wherein the appellant was requested to collect the document after making necessary payment of Rs. 226/-. It was further contended by the then PIO that the APIO never informed him about the said application nor about the action taken by her. It was also further contended that even the order of FAA dated 27/7//12 was not brought to his notice by APIO or any other dealing hand as such he was not aware of the order of First appellate authority and its compliance thereof. It is his further contention that the said APIO have retired from her services on Superannuation on 31/10/12. In support of his contention he relied

upon letter dated 13/6/12 issued to appellant by said APIoMaria Alva Furtado and her reliving order dated 30/4/2012.

9. In the nutshell it is the case of respondent then PIO that the application and the order of FAA was not brought to his notice at any point of time and it was dealt directly by the APIO and she had taken all necessary steps to provide the available information on the record of the Mormugao Municipal Council.
10. Vide the reply dated 26/7/2018 it is further contended that he has always carried out the duties with full responsibility in bonafide and obedient manner and he has always tried to provide available information to the information seeker.
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. In the present case, no any cogent and convincing evidence brought on record by the appellant showing that Respondent PIO was aware of order of First appellate authority and deliberately with malafide intention did not comply the same.
14. In the above given circumstances, 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 it is supported by documentary evidence as such I hold that there are no grounds to hold that information was intentionally and deliberately not provided to him.
15. 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 7/2/2017 stands withdrawn.
16. The order dated 14/11/2017 passed by this Commission in penalty proceedings 7/2017 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