

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Penalty 23/2018
In
Appeal No.188/2017

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

.....Appellant

V/s

1. The Public Information Officer,
O/o. The Deputy Collector-I and S. D.O.,
Mathany Saldanha Administrative Complex,
Margao, Salcete-Goa

2. The First Appellate Authority,
O/o. the Additional Collector-I,
Mathany Saldanha Administrative Complex,
Margao, Salcete-Goa

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 24/08/2018

ORDER

1. The Commission while disposing the above Appeal vide order dated 31/5/2018 had directed to PIO to furnish the information at point No. 10 as sought by the appellant vide his application dated 20/04/2017 within the 15 days from the date of the receipt of the order. vide said order also the commission has directed to issue notice u/s 20(1) of the Right To Information Act, 2005 to the Respondent Public Information Officer (PIO) for delaying in furnishing the information.
2. In view of the said order passed by this Commission on 31/5/2018, the proceedings should converted into penalty proceedings.

3. Accordingly showcause notice were issued to PIO on 1/6/2018.
4. In pursuant to the showcause notice, the PIO Shri Uday Prabhu Desai appeared and filed his reply to showcause notice on 13/6/2018 alongwith enclosures. On 5/7/2018 an affidavit of Shri Uday Prabhu Desai and that of dealing clerk Mrs. Bernadita Rodrigues were also filed by PIO. The copy of the said reply alongwith the enclosure and affidavit were furnished to the appellant.
5. Arguments were advanced by both the parties.
6. I have considered the records available in the file and also submission of both the parties.
7. 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."

8. In the back ground of above ratio laid down by the Hon'ble High Court, the point arises for my determination is:-
 - a) Whether the delay in furnishing information by PIO was deliberate and intentionally?
9. The appellant contended that in the affidavit of Shri Uday Prabhu Desai it is stated that memorandum dated 29/6/2018 was issued to Bernadita Rodrigues, however no copy of the same was enclosed along with the affidavit as such he insisted for the copy of the memorandum issued to Smt. Bernadita Rodrigues. The commission did not take into consideration the said objection as the said issue is primary a matter between the employee and

the employer and are exempted for disclosure, as held by the Apex Court in special leave petition (Civil) No. 27734 of 2012; Girish Deshpande V/s Central Information Commissioner .

10. Though the appellant has raised objection that there is a defect in putting the seal on the affidavit of Smt. Bernadita Rodrigues, I find no substance to reject the said affidavit on said ground.
11. Vide reply dated 13/6/2018 and also by affidavit dated 5/7/2018, the PIO Shri Uday Prabhu Desai have contended that the application dated 20/4/2017 from appellant was marked to the dealing clerk Smt. Bernadita Rodrigues, UDC by the inward clerk. It was further contended that the notesheet was submitted to him and on 28/4/2017 he had directed to put up the information sought by the appellant within a week to him. In support of his above contention he had relied upon the notesheet which is an annexure "C". It was further contended that no letter of intimation addressed to appellant to collect the information was put before him for his signature by concerned dealing clerk Smt. Bernadita Rodrigues. It is his further contention that on being aware of the present proceedings, he sought instructions/clarification from the said dealing clerk and directed said dealing clerk to submit the copy of the proceedings drawn at the time of inspection of said file and the intimation send to the appellant. However it was informed to him by the said dealing clerk that no such proceedings of inspection carried out by appellant is drawn by her as such a memorandum dated 29/6/2018 issued to the said clerk directing to give the explanation/clarification in the form of affidavit as to why inspection of the file was allowed to appellant without giving intimation in writing and for not sending intimation to appellant. He further contended that in pursuant to the said memorandum Smt. Bernadita Rodrigues filed an affidavit dated 3/7/2018 and he placed the said affidavit on record.

12. The dealing clerk Smt. Bernadita Rodrigues vide her affidavit have admitted of having marked the said application to her however she contended that since the appellant have orally told her that he would come to inspect the file on 11/5/2017 she did not processed his application with bonafide assumption. She further contended that the appellant carried out the inspection of the file on 11/5/2017 and on his request she calculate the fees to be paid by the appellant as Rupees 198/- . However inadvertently marked the note to cashier to except the amount of Rs, 198/- on notingsheet of another RTI application of appellant dated 21/3/2017 instead of his application dated 20/4/2017. It was further contended that the appellant told her not to send any intimation to him for collecting the documents as he would visit the office within 3 to 4 days for collecting the same . It was further contended that she kept the information ready and in good faith anticipating that he would come within 3 to 4 days to collect the same , no separate intimation was sent to him. It was further contended that there was no any malafide intention or motive in not intimating the appellant to collect the copies of documents but it was sheer result of good faith kept in the words of applicant to ask that not to send any information and he would collect the same within 2 -3 days.
13. In brief it is a contention of the dealing clerk that the inspection is sought by the appellant vide application dated 20/4/2017 was given on 11 /5/2017 and the information was kept ready within stipulated time of 30 days. However the appellant failed to collect the same .
14. Hence it is the case of the Respondent PIO that there was not willfull intention on his part to refuse the information and that he have acted bonafidely in discharging his duties under the RTI Act. It is his further case that there is no evidence of malafide denials of information in order to attract the penalty.

15. The explanation given by PIO appears to be convincing and probable as the same is supported by the documentary evidence more particularly by the affidavit of dealing clerk Smt. Bernadita Rodrigues.

16. 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."

17. Yet in Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another.

"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”.

18. In the present case the records shows that PIO had put up note on 28/4/2017 calling upon the information from the concerned staff within a week. It could be gathered from the said note that there was no intention on his part to deny the information. The dealing clerk failed to put up information before him and on the contrary chose directly to furnish the same to the appellant without informing the same to the Respondent PIO. In this case it is seen that the dealing clerk did not adhere the instructions given by the PIO and the PIO has issued to her memorandum to that effect. Prima facie it does not appear that the PIO was negligent in his duty under the RTI. On the contrary every step have been taken by the PIO in the direction of furnishing the required information to the appellant.
19. Considering the peculiar circumstances and the facts of the present case and scribing to the ratios laid down by the above courts, I am of the opinion that for the fault and the lapses on the part of the dealing clerk the PIO cannot be held responsible and cannot be made a scapegoat.
20. In view of above I hold that the levy of penalty is not warranted in the facts of the present case consequently showcause notice issued to PIO on 1/6/2018 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