

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

CORAM: Shri Juino De Souza: State Information Commissioner

Penalty Case no.10/2012
In Complaint No 592/SIC/2010

Shri Ashok Desai,
R/o 309, 3rd Floor,
Damodar Phase -2,
Near Margao Police Station
Margao – Goa.

..... **Appellant**

v/s

The Public Information Officer,
The Chief Officer,
Canacona Municipal Council,
Canacona – Goa.

.....**Respondents**

Relevant emerging dates:

Date of Hearing : 27-02-2019

Date of Decision : 27-02-2019

O R D E R

1. **Brief facts of** the case are that this Commission had vide order dated 16/01/2012 in the above matter directed to issue notice to the Respondent PIO, to show cause u/s 20(1) of the RTI act 2005 as to why penal action should not be taken against the Respondent PIO for causing delay in furnishing the information and the explanation, if any should reach the Commission on or before 28/03/2012.
2. The said matter was listed on board and has come up for hearing on several occasions and pursuant to the notices issued, the Respondent former PIO, Mr. Pradeep Naik then holding the post of Chief Officer, Canacona Municipal Council, Canacona – Goa and presently posted as Dy Registrar of Co-op societies, Panaji Goa appears before the Commission and tenders his explanation.
3. Respondent former PIO, Mr. Pradeep Naik submits that RTI Application was dated 11/10/2010 and reply was sent to the Complainant on 09/11/2010.

4. He further submits that the relevant file alongwith legal documents containing the information was pending with the Superintending Engineer, Circle-I, Altinho Panaji due to obtaining revised technical sanction for the development work taken by the office of Canacona Municipal Council and as such the information could not be furnished immediately, however as soon as the file was received in the Office of Canacona Municipal Council (CMC) the information was kept ready and the Complainant was informed to collect the same after paying requisite fees from the office of CMC during office hours, but the Complainant did not give any response nor visited the office to collect the same.
5. It is submitted that the RTI application was dated 11/10/2010 and that reply was sent on 09/11/2010 and that the final information was furnished on 05/09/2011 and that there was no deliberate delay nor any malafide intention in causing intentional delay in furnishing the information. The former PIO also requests the Commission to take a lenient view and condone the delay.
6. The former PIO submits a detailed reply dated 27/02/2019 explaining the facts and also tenders an unconditional apology. The said reply is taken on record.
7. The Commission after hearing the submissions and on going through the explanation tendered, finds that the RTI application was dated 11/10/2010 and that reply was sent on 09/11/2010 within the 30 days period and that the final information was furnished on 05/09/2011 and thus there is a delay is of 300 days. The Commission however finds that the delay is purely unintentional and inadvertent and that the information could not be furnished since the said file was pending with Superintending Engineer, Circle-I, Altinho Panaji. Thus there is no malafide intention on the part of the PIO to cause any deliberate or intentional delay.

8. The Commission accordingly accepts the explanation tendered by the former PIO and in view of the unconditional apology tendered takes a lenient view and condones the delay and also exonerates the former PIO from levy of any penalty.
9. The Commission however cautions the former PIO who is still in government service to be diligent and cautious in future while dealing with RTI applications so as to ensure disposal in a time bound manner as per the provisions of the RTI Act strictly.

The High Court of Bombay at Goa, Panaji writ Petition No.704 of 2012 has held in para 6 " the question, in such a situation, is really not about the quantum of penalty imposed, but imposition of such a penalty is a blot upon the career of the Officer, at least to some extent. In any case, the information was ultimately furnished, though after some marginal delay. In the facts and circumstances of the present case, the explanation for the marginal delay is required to be accepted and in fact, has been accepted by the learned Chief Information Commissioner. In such circumstances, therefore, no penalty ought to have been imposed upon the PIO".

The High Court of Punjab and Haryana at Chandigarh civil writ petition No.6504 of 2009 has held that 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 that every delay that should be visited with penalty. If there is a delay and it is explained, the question will only revolve on whether the explanation is acceptable or not.

The penalty proceedings in above case are accordingly ordered closed.

All proceedings in the penalty case also stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd/-
(Juino De Souza)
State Information Commissioner