

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

CORAM: Shri Juino De Souza: State Information Commissioner

Penalty Case No.11/2019
In Appeal No. 78/SCIC/2013

Gajanan D. Phadte,
898, Nila Niwas,
Alto Torda,
Porvorim – Goa.

.....Appellant

v/s

1. The Public Information Officer,
Mamlatdar of Bardez,
Mapusa-Goa.

2. The First Appellate Authority,
Dy. Collector & SDO, Bardez
Mapusa, Bardez- Goa.

....Respondents

To,
The former PIO,
Dy. Director of Panchayat,
Junta House, Panaji-Goa.

Relevant emerging dates:

Date of Hearing : 29-04-2018

Date of Decision : 29-04-2018

O R D E R

1. Brief facts of the case are that this Commission had vide Judgment order dated 24/01/2019 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 penalty 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 06/03/2019 at 11.30 a.m..

2. Pursuant to the notice dispatched, the former PIO Shri. Pundalik Khorjuvekar, presently posted as Dy. Director of Panchayat, appears before the Commission and tenders his explanation. Shri. Pundalik Khorjuvekar submits that after receipt of the RTI application dated 02/01/2013, he had made a diligent search for the said information in the records,....

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.....however the same were not traceable and as such the information could not be furnished and which fact was orally informed to the RTI applicant when he was present in the office of the PIO.

3. It is also explained that after receiving the Order dated 03/04/2013 from the First appellate authority (FAA), once again a search was made for the missing records and the same were still not traceable. Shri. Pundalik Khorjuvekar submits that there are no malafide intention on his part to intentionally deny the information and also states that thereafter he was promoted and transferred.
4. Shri. Pundalik Khorjuvekar tenders an unconditional apology for not furnishing a written reply to the Appellant as was required u/s 7(1) of the RTI act 2005 and assures that the same will not be repeated in future. He requests the Commission to condone the delay and close the penalty case. The former PIO files a written explanation dated 29/04/2019 confirming the facts which is taken on record.

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 following observation of the Hon'ble Delhi High Court in Bhagat Singh v. CIC & Ors. WP(C) 3114/2007 is pertinent in this matter: "17. This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. The materials on record clearly show the lackadaisical approach of the second and third respondent in releasing the information sought. However, the Petitioner has not been able to demonstrate that they malafidely denied the information sought. Therefore, a direction to the Central Information Commission to initiate action under Section 20 of the Act, cannot be issued."

High Court of Delhi in the decision of Col. Rajendra Singh v. Central Information Commission and Anr. WP (C) 5469 of 2008 dated 20.03.2009 had held as under: "Section 20, no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the Commission has to be satisfied that the delay occurred was without reasonable cause or the request was denied malafidely.

.....The preceding discussion shows that at least in the opinion of this Court, there are no allegations to establish that the information was withheld malafide or unduly delayed so as to lead to an inference that petitioner was responsible for unreasonably withholding it."

5. The Commission accepts the explanation tendered by the former PIO and in view of the unconditional apology tendered exonerates former PIO from imposing any penalty. Shri. Pundalik Khorjuvekar, the former PIO who is still in government service is hereby warned to be more cautious and diligent in the future while dealing with the disposal of RTI applications which should be expedited in a time bound manner purely as per the RTI act 2005.

With these observations, the penalty proceedings in above case accordingly stand closed.

Pronounced at the conclusion of the hearing. Notify the party concerned.
Authenticated copies of the order be given free of cost.

Sd/-
(Juino De Souza)
State Information Commissioner