

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

CORAM: Shri Juino De Souza: State Information Commissioner

**Penalty No. 38/2019 in
Appeal No. 128/2019/SIC-II**

Shri Digambar P. Talkar,
Son of late Pundalik Talkar,
40 years of age,
H. No. 321, Chinch Bhatwadi,
Mayem, Bicholim – Goa.

.....Appellant

v/s

1. The Dy. Collector/Sub Divisional
Magistrate,
Bicholim – Goa.

2. First Appellate Authority
The Collectorate North Goa,
Panaji – Goa

....Respondents

Relevant emerging dates:

Date of Hearing : 27-11-2019

Date of Decision : 27-11-2019

O R D E R

1. Brief facts of the case are that this Commission had vide order dated 20/08/2019 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 penal action should not be taken for causing delay in furnishing the information and the explanation, if any should reach the Commission on or before 03/10/2019 at 11.30 a.m.

2. **HEARING:** Pursuant to the notice issued, the PIO Shri. Sachin Desai, Dy. Collector Bicholim appears before the Commission and tenders his explanation.

3. **SUBMISSIONS:** Shri. Sachin Desai submits that when the RTI application was filed on 20/02/2019, he was not the PIO at that point of time and took the charge on 28/02/2019. He further submit that the RTI matters were assigned to a Head Clerk, however the Head Clerk was transferred to Sattari and as such the RTI application remained pending for disposal. ...2

4. It is further submitted that he came to know of the RTI Application after receiving notice of the FAA and that subsequently after the Order was passed by the FAA to provide the information the same was furnished.
5. It also submitted that he was holding the charge as ARO (Assistant Returning Officer) for conduct of General Lok Sabha Election 2019 during the said period, as such was busy with election matter and had made an attempt to contact the RTI applicant telephonically to inspect the record, however there was no response.
6. It is finally submitted that all information has been received by the Appellant and that the delay in furnishing the information was purely inadvertent and unintentional and there was no malafied intention to cause any deliberate delay and requests the Commission to take a lenient view and condone the delay. The PIO files a written explanation dated 27/11/2019, which is taken on record.
7. **FINDINGS:** The Commission after hearing the submission of the PIO and perusing the written explanation comes to the conclusion that there are no malafide intentions on the part of PIO to intentionally or deliberately deny or delay the information and which has been furnished to the Appellant.
8. 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."

9. 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.*"
10. The High Court of Bombay at Goa, Panaji writ Petition No.704 of 2012 has held. *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".*
11. 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.*
12. **DECISION**: The Commission accordingly accepts the explanation tendered by the PIO and condones the delay and also exonerates the PIO from imposing any penalty. However Shri. Sachin Desai, who is still in government service, is hereby cautioned to be diligent in the future while dealing with RTI applications which should be disposed in a time bound manner purely as per the RTI act 2005.

With these observations, the penalty proceedings in above case are ordered 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