

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

**Review Application No.03/2017
In Penalty No. 9/2016
In Appeal No.23/SIC/2014**

Public Information Officer,
(Then PIO Shri. Clen Madeira)
O/o the Administrator of Comunidade,
North Goa Mapusa Goa.

.....Petitioner.
(Original Respondent no.1)

V/s.

1. Mr. Trazano D'Mello, (Original Appellant)
Vice President and Chief Spokesperson,
N.C.P., Goa State,
r/o. Opposite Peddem Sports Complex,
Mapusa Goa.

2. The First Appellate Authority,
Additional Collector, (Original Respondent no.2)
Office at Collectorate Building,
North Goa Panaji Goa. Respondents

CORAM:Ms.. Pratima K. Vernekar, State Information Commissioner

**Filed on 18/8/2017
Decided on: 31/05/2019**

ORDER

1. The petitioner, then PIO Shri Clen Medeira, Original Respondent No. 1 has filed present Review Application on 18/08/2017 praying that order passed by this Commission dated 14/06/2017 in penalty case No. 09/2016 in Appeal No. 23/SIC/2014 holding Public Information Officer (PIO) Mr. Clen Madeira to pay Rs. 3000/- as penalty be quashed and set aside by reviewing the order.
2. Brief facts leading to the present review application are that earlier in the main Second appeal No. 23/SIC/2014, an order was passed by this Commission on 18/07/2016 directing the Petitioner PIO to provide information, free of cost as sought by the appellant vide his application dated 7/10/2013 within three weeks from the receipt of the order and to report compliance to this commission so also

showcause notice as provided under 20(1) and (2) was directed to be issued to Petitioner PIO herein (original respondent no. 1)

3. Accordingly separate penalty proceedings were initiated and showcause notice was issued to Petitioner PIO on 26/07/2016, pursuant to which Advocate Shri K. S. Bhosle appeared on behalf of Clen Madeira and filed reply on 22/08/2016 to showcause notice dated 26/07/2016.
4. An application also filed on 22/08/2016 by Respondent no.1 herein Shri Trazeno D'mello (the original appellant in appeal No. 23/SIC/2014 and in penalty case No. 9/2016) with Registry of this Commission interalia intimating this Commission that he had not received information nor any communication from the office of the Petitioner PIO despite of order dated 18/07/2016 passed by this Commission in appeal No. 22/SIC/2014 and Appeal No. 23/SIC/2014.
5. On receipt of the said application from Respondent no. 1 Shri Trazeno D'Mello , (original appellant),the Registry of this Commission vide letter dated 22/09/2016 forwarded the said letter regarding non compliance of the order of this Commission by the PIO for necessary action of the petitioner PIO (original respondent No. 1).
6. The Respondent no. 1(original appellant) by his application dated 3/10/2016 provided the names and the period of the respective PIOs and hence notices were issued to Chandrakant B. Shetkar, Vishant S. N. Gaunekar, Narayan N. Gad, Dasharath Redkar, Pundalik Khorjuekar and Clen Madeira on 13/10/2016. A fresh notice was issued to the Petitioner on 31/3/2017.
7. This Commission after considering submission of then PIO which was offered by him vide his reply dated 22/8/2016, the commission by order dated 14/06/2017 came to the finding that the then PIO Mr. Clen Madeira has not complied the order of this commission dated 18/7/2016 and hence directed petitioner to pay a sum Rs. 3000/-

as penalty. In this background the petitioner approaches Commission by this Review Application.

8. Notices of this review application filed by petitioner Mr. Clen Madeira were served on both the parties. The original appellant Shri Trazeno D'mello who is the Respondent No. 1 herein opted to remain absent. Petitioner Mr. Clen Madeira was initially represented by Advocate Matlog D'Souza .
9. The Petitioner PIO Mr. Clen Madeira and his legal counsel remained absent on most of the hearings and as such the matter had to be adjourned , however in the interest of justice ample opportunity was given to Petitioner PIO to substantiate his case. Since he did not show any interest in the present proceedings this commission had no any other option then to decide the matter based on the records available in the review petition.
10. I have carefully gone through Records of the case and also considered pleading of the PIO and the points that arises for my consideration, is
 - (i) whether the review is maintainable under the RTI Act and whether the relief prayed is to be granted or not?
11. The powers and function of this Commission are laid down in the Act and the Commission being quasi judicial authority has to exercise the powers which are specifically conferred on it under the RTI Act. The RTI Act has not specifically conferred any powers to review his own decision/orders. On the contrary section 19(7)of the RTI Act, 2005 states decision passed by this Commission shall be binding therefore it puts a ban on review over its own decision when order once passed.
12. Even the procedural law i.e. the code of civil procedure ,Section 151 and 152 permits amendment and Judgment and decrees arising out of accidental slip or omission or if the appellant was not given opportunity to be heard and not otherwise.

13. In the present case the penalty was imposed on Petitioner PIO for not complying the order of this commission dated 18/7/2016 directing the PIO to provide the information free of cost as sought by the appellant vide his application dated 07/10/2013 within three weeks from the receipt of the order.
14. The Petitioner PIO was given opportunity of being heard during penalty proceedings. He was also afforded the opportunity to comply the order of this commission dated 14/6/2017 and to provide the information.
15. The records shows that the Under Secretary of this Commission vide letter dated 22/09/2016 had forwarded the letter of the Respondent no. 1(original appellant)dated 22/08/2016 regarding non compliance of the Order by PIO and was requested for necessary action of the Petitioner PIO .
16. It is a admitted fact that Petitioner herein Mr. Clen Madeira was officiating as PIO when the order is passed by this commission. It is his own case that he was relieved from additional charge as administrator of Comunidade, North Zone at Mapusa on 28/12/2016. The order was passed on 18/7/2016 wherein he was directed to provide the information within three weeks. The records shows that the averments made by the Respondent no. 1 Shri Trazeno D'Mello (original appellant)in his application dated 22/8/2016 are not catagorily disputed and rebutted by him. The Petitioner herein was also afforded opportunity to explain why the order of this commission could not have been enforced .
17. The Petitioner then PIO vide reply dated 22/08/2016 had not assigned any reasons for not complying order of this Commission nor specified steps taken in those directions. Nothing is placed on record by the Petitioner PIO that the order of this Commission dated 18/07/2016 was complied by him or any communication was issued to the appellant in that respect.

18. The ground taken by the Petitioner in the present review application were not agitated during penalty proceedings and as such it appears to be after thought.
19. In High Court of Delhi at New Delhi in WP (C)12714/2009 in case of Delhi Development Authority V/s Central Information Commission and another on 21/05/2010 at para 35 held that:-

“Neither the RTI Act nor the rules framed there under grant the power of review to the Central Information Commission or the Chief Information Commissioner. Once the statute does not provide for the power of review, the Chief Information Commissioner cannot, without any authority of law, assume the power of review or even of a special leave to appeal. Clearly, the said regulation is beyond the contemplation of the Act, such a regulation is ultra virus the provisions of the Act”.

20. The Hon'ble Apex Court in Civil Appeal NO. 2355 of 1979; Grindlays Bank Ltd. V/s Central Government Industrial Tribunal and other's has held at para 13

“The expression `review ` is used in the two distinct senses namely(1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. **It is in the later sense that the court in Patel Narshi Thakershi case held that no review lies in merits unless statute specifically provides for it”.**

21. The Hon'ble Apex Court yet in another decision in civil appeal No. 3475 of 2003:kapra Mazdoor Ekta Uinon V/s Birla Cotton spinning and weaving Mills Ltd, has held at para 19;

“ Where a court or quasi Judicial authority having jurisdiction to adjudicate on merits proceeds to do so, **its judgment or order can be reviewed on merits only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication**”.

22. The Hon’ble High Court of Bombay at Goa in criminal Miscellaneous application No. 222 of 2018, Dilip Parulekar V/s Advocate Aresh Rodrigues at para 17 has held;

“ I have gone through the judgment and order dated 22/6/2018 in the context of the grounds as raised in this application and I do not find that the judgment demonstrates any error apparent on the face of the record, so as to require its review/ modifications or recall. The point is accordingly answered in the negative. The application is without any merits and is accordingly dismissed.”

23. By subscribing to the above ratio laid down by Hon’ble Apex Court and Hon’ble High Courts and considering the facts of the present review application, I find no grounds made out for invoking my right, for review and that the application for review dated 18/8/2017, have no merits and the same to be dismissed which I hereby do.

Pronounced in the open court. Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Sd/-

(Ms. Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa