

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 479 OF 2010

Shri Dinesh Vaghela,
Navaguari Apartments, 2nd
Floor, Opp. ICICI ATM, Alto,
Porvorim-Goa. Petitioner

Versus

1. Goa State Information
Commission, Sharmashakti
Bhavan, Ground Floor,
Behind Kadamba Bus Stand,
Patto, Panaji, Goa 403
001.
2. Shri S.T. Bhangui,
Superintendent Engineer-
II(N) and Public
Information Officer,
Electricity Department,
Panaji-Goa.
3. The Chief Electrical
Engineer & First Appellate
Authority, Electricity
Department, Vidhyut Bhavan,
Panaji-Goa. Respondents

Mr. Valmiki Menezes, Advocate for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate
for Respondent Nos. 1 and 3.

Mr. Vivek Rodrigues, Advocate for Respondent No.2.

CORAM:- C.V. BHADANG, J.

DATE:- 20th JULY, 2016.

ORAL JUDGMENT:

By this petition, the petitioner is challenging the order dated 30.06.2009 passed by the Goa State Information Commission (State Commission, for short), by which a penalty of Rs.2,000/- is imposed on respondent no. 2 (who was the opponent no. 1 before the State Commission).

The petitioner is basically aggrieved by the inadequate amount of penalty imposed on respondent no. 2 and the contention is that under Section 20 of the Right to Information Act, 2005 (the Act, for short), the State Commission had no authority to reduce the penalty, by taking a lenient view.

2. The brief facts are that the petitioner had sought certain information about leave records of one Kashinath Shetye, which application was rejected by the Public Information Officer (PIO) and also the First Appellate Authority. On

31.12.2008, the State Commission directed that the information be furnished within ten days. It appears that the third party, Mr. Kashinath Shetye challenged the order of the State Commission before this Court in Writ Petition No. 1/2009, which was filed on 02.01.2009. Admittedly, this Court did not grant stay to the order of the State Commission. The petitioner was heard on 09.01.2009 and the judgment was reserved and ultimately, on 20.01.2009, the petition was dismissed. Undisputedly, the information as directed, has been supplied on 21.01.2009.

3. In the meantime, on 12.01.2009, the petitioner requested the PIO to supply the information in compliance of the order of the State Commission. The PIO supplied part of information on 15.01.2009. On 28.01.2009, the petitioner moved the State Commission alleging breach of the order, by the PIO. The State Commission in the impugned order found that there was no deliberate non compliance of the order, by

the respondent no. 2. However, the State Commission found that the respondent no. 2 was required to supply the copies of the leave applications dated 08.02.2008, 12.03.2008, 13.03.2008, 14.03.2008, 03.04.2008 and 04.04.2008.

4. The State Commission further found that the respondent no. 2 by letter dated 05.01.2009 brought to the notice of the State Commission that he had ceased to be the PIO and was appointed as the First Appellate Authority w.e.f. 26.09.2008. This according to the State Commission was gross negligence on the part of respondent no. 2.

5. In paragraph 9, the State Commission has found that due to incomplete information provided and the conduct of the respondent no. 2 "in remaining silent", the respondent no. 2 was required to pay the compensation. At the same time, the State Commission was of the opinion that the lapse on the part of the respondent no. 2 was on account of the fact that no proper guidance was

given to the respondent no. 2 and the "ends of justice will be met by taking a lenient view". In such circumstances, the State Commission imposed penalty of Rs.2,000/-.

6. I have heard Mr. Menezes, the learned Counsel for the petitioner, Ms. Linhares, the learned Additional Government Advocate for respondent nos. 1 and 3 and Mr. Rodrigues, the learned Counsel for the respondent no. 2.

7. The only contention raised on behalf of the petitioner is that under Section 20 of the Act, the Central or the State Commission, as the case may be, shall impose a penalty of Rs.250/- for each day's delay in supplying the information, subject to a maximum of Rs.25,000/-. The learned Counsel has pointed out that the provisions of Section 20 of the Act are mandatory in nature, which is apparent from the use of word 'shall' and thus, the State Commission could not have taken a lenient view. The learned Counsel has pointed out

similar orders passed by the State Commission, in some other cases, in order to submit that this Court may decide the issue as it is of wide importance and a decision of this Court would be necessary for laying down the law on the point.

8. On the contrary, the learned Counsel for the respondent no. 2 has submitted that the State Commission has specifically come to the conclusion in paragraph 6 of the order that there was no deliberate non compliance of the order of the State Commission. The learned Counsel has pointed out that the State Commission basically found that there was non communication of the change, which had taken place on 26.09.2008, in which the respondent no. 2 was appointed as the First Appellate Authority. The learned Counsel pointed out that for this reason, no penalty could be imposed, within the meaning of Section 20 of the Act. The learned Counsel has pointed out that the time for supply of information was to expire on 10.01.2009, while this Court had heard the writ

petition and the judgment was reserved on 09.01.2009. The learned Counsel submits that thus, it was appropriate on the part of the PIO to have waited for the decision of this Court and merely because, there was no stay granted by this Court, would not make the act of respondent no. 2, a deliberate attempt to deny the information. It is submitted that the information was supplied including the six leave applications, on 21.01.2009. He submits that although, the respondent no. 2 did not challenge the impugned order, imposing penalty, no case for its enhancement is made out.

9. The learned Additional Government Advocate for respondent nos. 1 and 4 has supported the impugned order.

10. I have carefully considered the rival circumstances and the submissions made. The relevant dates, are matters of record. The State Commission had passed an order on 31.12.2008,

directing the supply of information in respect of the third party. The third party filed a petition before this Court on 02.01.2009, challenging the said order, in which the judgment was reserved on 09.01.2009 and the petition was ultimately dismissed on 20.01.2009. The petitioner in the meantime approached the State Commission alleging breach of the order by respondent no. 2 on 15.01.2009. Undisputedly, the entire information has been supplied on 21.01.2009.

11. It would be significant to note that in paragraph 6 of the impugned order, the State Commission has found that, in as much as, the order of the State Commission was under challenge before this Court from 02.01.2009 to 20.01.2009 and as during this period efforts were made by respondent no. 2 to provide the information, it cannot be said that the respondent no. 2 had deliberately failed to comply with the order of the State Commission.

12. A perusal of paragraphs 7 and 8 would clearly bring out that, basically the State Commission found that there was gross negligence on the part of the respondent no. 2, to bring to the notice of the State Commission the change effected from 26.09.2008, in which the respondent no. 2 was appointed as the First Appellate Authority. Thus, it can be seen that the "misconduct" on the part of the respondent no. 2, as found by the State Commission, is only about failure in informing about the changes, which had taken place on 26.09.2008 and not about the supply of information.

It is stated in paragraph 9 that in not informing the changes, inconvenience was caused to the petitioner. However, here again, the State Commission has found that this was on account of the fact that no proper guidance was given to the respondent no. 2. This has prompted the State Commission to take a lenient view.

13. It is trite that under Section 20 of the Act, the State Commission, can impose penalty only where it has been found that the PIO, without any reasonable cause, has either refused to receive an application for information or has not furnished the information within the time specified under sub-section (1) of Section 7 or has malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed the information, which was the subject matter of request or has obstructed in any manner in furnishing the information. Thus, the conduct of the respondent no. 2 in not informing the change about he having been appointed as the First Appellate Authority, cannot come within the ambit of Section 20 of the Act. However, respondent no. 2 has chosen not to challenge the said order and therefore, the said matter has to be left at that. In either case, I do not find that the impugned order to the extent of imposing penalty can be interfered, at the instance of the petitioner, on the ground that the

same is inadequate.

14. In my opinion, it would not be necessary to go into the larger question, as to whether under Section 20 of the Act, the State Commission can reduce the penalty, because it would be largely academic, in the facts of the case. It is trite that a Writ Court would be slow in deciding, questions which are of academic nature. In my considered view, the question whether the imposition of the penalty at the rate of Rs.250/- per day is mandatory or whether the Commission can in appropriate cases reduce the amount will have to be deferred to a future appropriate occasion. For the present purpose, I do not find that any interference is required in the impugned order.

In the result, the Writ Petition is hereby dismissed, with no order as to costs.

C.V. BHADANG, J.