

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.303 of 2011**

Mr. Johnson B. Fernandes,
Deputy Collector and SDO,
Margao,
Public Information Officer
(Under R.T.I. Act)
Collectorate Building,
Margao, Goa

.. Petitioner

Vs.

1. The Goa State Information Commission
Through the State Chief Information
Commissioner,
Ground Floor, Shrama Shakti Bhavan,
Patto Plaza, Panaji, Goa.
2. Raghunath N. Kauthankar
F.No.A-3, Kancho Apartments,
Opp. Government Housing School,
Aquem Alto, Margao, Goa.

.. Respondents.

Mr. J. A. Lobo, Advocate for the petitioner.

None for the respondents, though served.

CORAM :- C. V. BHADANG, J.

DATE:- 19th September, 2017

ORAL JUDGMENT :

The petitioner, who was at the relevant time a Mamlatdar and Public Information Officer (PIO) under the Right to Information Act, 2005 (Act, for short), is challenging the order dated 15/04/2011, passed by the Goa State Information Commission (State Commission, for short), thereby imposing a penalty of Rs.5,000/- under Section 20 of the Act, for delay in

furnishing the information. The respondent no.2 had filed an application seeking information under the Act on 09/02/2010 and the Appellate Authority had directed the information to be furnished. There was a delay of 7 months on the part of the petitioner in furnishing the information. In response to the show cause notice, the petitioner filed a reply on 24/02/2011 stating that he along with his staff was busy in the election to the Zilla Panchayat, 2010 in the month of February and thereafter, in the work of first phase of census operation, which was conducted soon after the by-election to Zilla Parishad, in May, 2010.

2. It was contended that the petitioner was unable to keep track and/ or monitor the progress of the application made by the respondent no.2. It was further contended that the dealing hand was also new to the post and was not conversant with the subject matter of the case as the information sought for was regarding a financial matter.

3. The State Commission, in para 5 of the impugned order found that the explanation of the petitioner was satisfactory "to some extent". However, at the same time, the State Commission found that the delay was inexcusable and, therefore, proceeded to impose the penalty of Rs.5,000/-.

4. I have heard Shri Lobo, the learned Counsel for the

petitioner. None for the respondents. On behalf of the petitioner, reliance is placed on the decisions of this Court in the case of **A. A. Parulekar Vs. Goa State Information Commissioner** (W.P.No.205/2007, decided on 17/09/2009) and in **Shivanand Salekar Vs. The Goa State Information Commission** (W.P.No.488/2011, decided on 05/05/2017.)

5. I have considered the circumstances and the submissions made.

6. As noticed earlier, the State Commission has found that the explanation for the delay was satisfactory to some extent. There is no finding in the impugned order that there was any intentional delay in furnishing the information. This Court, in the case of **A. A. Parulekar** (supra), has, *inter alia*, held that the order of penalty is akin to action in criminal law and it is necessary to find that failure to supply the information was either intentional or deliberate. There is no finding to the effect that the delay in furnishing the information was either deliberate or intentional and on the contrary, the State Commission has found the explanation to be satisfactory, albeit to some extent. Indisputably, the information has now been furnished to the respondent no.2.

7. In such circumstances, in my considered view, the

impugned order cannot be sustained. The petition is, accordingly, allowed. The impugned order is hereby set aside. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA