

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 488 OF 2011.

1. Shri Shivanand Salekar,
P.I.O, Office of the Executive
Engineer WD XVIII(Roads),
PWD, Ponda-Goa. ... Petitioner.

Versus

1. The Goa State Information
Commission Through the
State Chief Information
Commissioner, Ground
Floor, Shrama Shakti
Bhavan, Patto Plaza,
Panaji Goa.
2. Kamu Mahadev Tari,
House No. 728, Khandir,
Karai, Shiroda,
Ponda Goa (Deceased) ... Respondents.

Mr. J. Lobo, Advocate for the petitioner.

None for the respondent.

CORAM: M. S. SONAK, J.

Date: 5th May, 2017.

ORAL JUDGMENT:

Heard Mr. J. Lobo, learned Counsel appearing for the petitioner.

2. The challenge in this petition is to the order dated 11.5.2011 made by State Information Commission imposing penalty upon the petitioner. The Operative portion of the impugned order

reads thus:-

“The Respondent is directed to pay ₹6,000/- (Rupees Six thousand only) as penalty. The said amount of penalty should be recovered in two monthly instalments from the salary of the Opponent from the month of July, 2011 and August, 2011 by the Director of Accounts.

A copy of the order be sent to the Director of Accounts, Panaji Goa for execution and recovery of the penalty from Respondent. The said amount be paid in Government Treasury

In case the Respondent wants to pay the entire amount in one instalment he is free to do so.

Pronounced in the Commission on this 11st day of May, 2011.”

3. Mr. Lobo, submits that the impugned order is contrary to the law laid down by this Court in the case of ***Reserve Bank of India Vs. Shri Rui Ferreira, in Writ Petition No. 132 of 2011 decided on 28.7.2011*** as well as decision in case of ***Shri A. A. Parulekar Vs Shri G. G. Kambli in Writ Petition No.364 of 2007 decided on 26.3.2010***. He submits that in this case, complainant without instituting an appeal before the Appellate Authority, straight away, filed a complaint before the Information Commissioner stating that

information requested by him was not furnished within a period of 30 days. Mr. Lobo submits that such course of action was impermissible in the light of the decision in the case of **Reserve Bank of India** (supra). Further, Mr. Lobo submits that there was hardly any significant delay in furnish of information and proper reasons were furnished as to why such information could not be given within 30 days period. Mr. Lobo submits that the petitioner had categorically pleaded that complainant was telephonically informed to come to collect the information but it is the complainant who failed to collect the same. For all these reasons, he submits that the impugned order is required to be interfered with.

4. Upon consideration of the aforesaid submissions and upon perusal of the record as well as the impugned order, I am satisfied that case is made to interfere with the impugned order. In the first place, course adopted by the State Information Commissioner appears to be contrary to law laid down by this Court in the case of **Reserve Bank of India**(supra). Secondly, there is no consideration whatsoever of the specific plea taken by the petitioner that the complainant was telephonically informed to collect the information but the complainant failed to collect the same. In all such of cases, such defence can be normally not be accepted. However, in the facts and circumstances of the present case, it does appear that the complainant was required to attend to certain assembly questions, therefore it is probable, such telephonic information may have been given to the complainant.

5. That apart , in the present case, the delay is really not very substantial. The information was applied on 26.10.2009 and therefore, the same had to be furnished by 25.11.2009. On 30.11.2009 itself the complainant made his complaint and no sooner, the petitioner received the notice of the complainant, the petitioner on 15.1.2010 actually furnished the information. If all such circumstances considered cumulatively and the law laid down by this Court in the case of **A. A. Parulekar** (supra) is applied, then, it does appears that there was no justification for imposing penalty of ₹6,000/- upon the petitioner.

6. For the aforesaid reasons the impugned order dated 11.5.2011, is hereby set aside. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

M. S. SONAK , J.

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