

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 01/2021
In Appeal No. 09/2020

Shri. Nixon L. Furtado,
H. No. 51, Copelwado,
Sernabatim, Salcete Goa.
403708.

..... Appellant

v/s

Public Information Officer,
Office of the Village Panchayat
of Colva, Salcete, Goa 403708.

..... Respondent

Relevant dates emerging from appeal:

Order passed in Appeal 09/2020	: 27/07/2021
Show Cause notice issued to PIO	: 06/08/2021
Beginning of penalty proceeding	: 30/08/2021
Decided on	: 29/11/2021

ORDER

- 1) The penalty proceeding has been initiated against the Respondent Public Information Officer (PIO) under section 20 (1) and /or 20 (2) of the Right to Information Act, 2005 (for short, the Act) for contravention of section 7 (1) of the Act and non compliance of the order of First Appellate Authority (FAA) and for non furnishing the complete information.
- 2) The complete details of this case are discussed in the order of this Commission dated 27/07/2021. However the facts are reiterated in brief in order to steer through in its proper perspective.

3) The Appellant had sought under section 6 (1) of the Act information on 3 points vide application dated 25/10/2019. The PIO failed to furnish the information and Appellant filed first appeal dated 29/11/2019 before the First Appellate Authority (FAA). The FAA disposed the appeal vide order dated 23/12/2019 directing the PIO to furnish the information to the Appellant free of cost within 10 days. The PIO failed to comply with the directions of FAA and being aggrieved by the inaction of the PIO, the Appellant filed second appeal dated 31/12/2019 praying for information, penalty to be imposed on PIO under section 20(1) and 20(2) of the Act, etc.

4) The Commission, after hearing both the Appellant and Respondents, disposed the appeal vide order dated 27/07/2021. It was concluded that the PIO is guilty of not replying to the Appellant within 30 days from the date of application, as mandated under section 7(1) of the Act, for not complying the FAA's order which amounts to dereliction of duty and for disrespecting the proceeding of this Commission. The Commission found that the PIO did not furnish complete information and the entire conduct of the PIO is not in consonance with the Act and such a lapse on the part of PIO is punishable under section 20 (1) and 20(2) of the Act. Thereafter, the PIO was issued show cause notice seeking his reply as to why penalty should not be imposed on him as provided in the Act.

- 5) Penalty proceeding was initiated against Shri. Amol Tilve, PIO and Secretary of Village Panchayat Colva. The Appellant appeared before the Commission regularly. PIO did not appear initially and later sought time vide applications dated 03/09/2021 and 27/09/2021 to file reply. Finally he filed reply on 14/10/2021. Appellant made submission dated 24/11/2021.
- 6) PIO, vide his reply contended that he has furnished part information on 22/02/2020 to the Appellant and remaining information could not be furnished as the clarification sought by him was not answered by the Appellant. PIO further contended that the appellant is seeking penalty on PIO without any cause of action, only with a view to harass the PIO. That the PIO being Secretary of Village Panchayat, is busy in multiple types of functions and the appellant is using the RTI Act as a tool to harass him, since the appellant did not want the PIO to be brought in as the Secretary of Village Panchayat Colva. He also contended that he has not denied the information and the appellant has not specified how he terms the intention of PIO as malafide.
- 7) On the other hand, the appellant vide his submission as well as during argument stated that the PIO deliberately and intentionally has not furnished the remaining information. The clarification sought by PIO was answered on more than one occasion by the Appellant by undertaking visits to the office of the PIO. He submitted that the said PIO is a habitual offender of the Act and has disrespected the appellant as well as FAA and the Commission by not attending the hearing. Whatever part information furnished

by him was during the proceeding of the second appeal and not within the stipulated period of 30 days and also not within the period of 10 days as directed by the FAA. This itself shows his malafide intention of not furnishing the information. Therefore the appellant presses for penalty under section 20 of the Act, on the PIO.

8) The Commission has perused the records of the appeal as well as present proceeding of this penalty matter. It is noted that the appellant filed application on 25/10/2019 to which PIO did not bother to reply. The appellant filed first appeal dated 29/11/2019, and the FAA vide order dated 23/12/2019 directed PIO to furnish the information within 10 days. PIO neither remained present before the FAA, nor complied with the order of FAA, who is his superior officer. Later appellant filed second appeal before this Commission, the proceeding continued for more than 18 months, repeated opportunities were granted to PIO to appear and file his say. However, except for once, he preferred to remain absent throughout. At least on two occasions vide application sent by post/email he sought more time to file reply and on one occasion sought a particular date for appearance, and even though Commission considered his request he did not turn up, nor filed reply during the entire proceeding of second appeal.

9) During the present penalty proceeding too same modus operandi is applied by the PIO. He sought time on two occasions vide applications sent by post/email to file reply and evaded personal appearance. Finally on 14/10/2021 he appeared and filed reply.

10) The Commission has observed that Shri. Amol Tilve, PIO, Secretary Village Panchayat Colva has a particular modus operandi while dealing with RTI applications. Like in this matter, he did not furnish information within the stipulated period, nor sent any reply to Appellant, remained absent and did not file any reply before the FAA, and later evaded hearing and avoided submission before this Commission. The PIO did not attend the penalty proceeding and filed the reply at the fag end of the proceeding, putting the entire blame on appellant by giving various excuses to hide his failure to furnish information, which is in public domain. The PIO, by his conduct has shown that he does not wish to respect the provisions of the Act and also he does not have any respect for the higher authorities so much so that he does not mind disobeying not only orders of his senior authority, i.e. FAA but also the notices issued by the Commission.

11) This conduct of PIO is deplorable, disgraceful, not at all in consonance with the aim of the Act and thus the Commission in no way can subscribe to such a shameful conduct. The modus operandi of the same PIO described above is seen by this Commission earlier in other matters as well as in some ongoing matters. Therefore the Commission is of the view that such officers should not be shown any leniency and must be punished under section 20 of the Act.

12) In the context of this matter, the Commission finds it appropriate to cite some relevant judgements by Honourable High Courts.

13) The Honourable High Court of Punjab and Haryana, in Civil Writ Petition No. 14161 of 2009, Shaheed Kanshi Ram memorial V/s State Information Commission has held:-

"As per provisions of the Act, Public Information Officer is supposed to supply correct information that too, in a time bound manner. Once a finding has come that he has not acted in the manner prescribed under the Act, imposition of penalty is perfectly justified. No case is made out for interference".

14) The Honourable High Court of Delhi in Writ Petition (c) 3845/2007; Mujibur Rehman V/s Central Information Commission, while mentioning the order of Commission of imposing penalty on PIO has held:-

" Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limit have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

15) The Honorable High Court of Himachal Pradesh in LPA No.4009 of 2013, Sanjay Bhagwati V/s Ved Prakash and ors decided on 05/11/2009 has held in para 16:-

" Bearing in mind the laudable object of the Act mere inaction or laid back attitude on behalf of the appellant cannot exonerate him of his culpability because higher is the post, not only more but greater are the responsibilities. Even after being put to notice by the petitioner that the information supplied to him is

incorrect, yet the appellant took no steps whatsoever to ensure that the true, correct and not incorrect, incomplete or misleading information is supplied to Respondent no.1. (Information seeker). If a person refuses to act, then his intention is absolutely clear and is a sufficient indicator of his lack of bonafides. After all malafide is nothing sort of lack of bonafides or good faith."

16) In another matter, the Honorable High Court of Gujarat in Special Civil application no. 8376 of 2010 in the case of Umesh M. Patel V/s State of Gujarat has held that penalty can be imposed on PIO if First Appellate Authority's order is not complied. In yet another matter the Honorable High Court of Bombay at Goa Bench in Writ Petition no. 304/2011, Johnson V. Fernandes V/s Goa State Information Commission has dismissed the appeal of the PIO by upholding the order of the Commission, imposing penalty for his failure to supply information within the stipulated period.

17) Hence it is seen that Honorable High Courts in number of matters have held PIO guilty of different acts like not acting in the manner prescribed under the Act, for his filibustering tactics, for furnishing the information after the stipulated period of 30 days, for not complying directions of FAA and have held that malafide is nothing but lack of bonafides or good faith. Subscribing to the ratio laid down in the above mentioned judgments, the PIO in the present matter is guilty of furnishing information after much delay, during the hearing of second appeal, and that too incomplete information; guilty of not complying FAA's directions, also guilty of disrespecting the FAA and this Commission by way

of continuous absence for most of the part of the proceeding.

18) From the conduct of the PIO, it is clearly inferred that the PIO has no concern to his obligations under the Act and has no respect towards the higher authorities, such a conduct is totally unacceptable vis-a-vis the intent of the Act and thus the Commission is completely convinced and is of the firm opinion that this is a fit case for imposing penalty under section 20 (1) of the Act on the PIO. Hence the Commission passes the following order.

a) The Respondent PIO, Secretary Village Panchayat Colva, Shri. Amol Tilve shall pay Rs. 12,000/- (Rupees Twelve Thousand only) as penalty for contravention of section 7 (1) of the Act, for not complying the Order of First Appellate Authority, for delay in furnishing the information and for not honouring the directions of this Commission.

b) Aforesaid amount of penalty shall be deducted from the salary of PIO in four instalments of equal amount of Rs. 3000/- each beginning from the salary of the month of December 2021 to March 2022 and the amount shall be credited to the Government treasury.

c) The Registry is directed to send copy of this order to the Block Development Officer, Salcete, Margao Goa and Director, Directorate of Panchayats, Government of Goa for information and appropriate action.

19) With the above directions the present penalty proceeding stand closed.

Pronounced in the open court.

Notify the parties.

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

Aggrieved party if any, may move against this order by way of a Writ Petition, as no further Appeal is provided against this order under the Right to Information Act, 2005.

Sd/-

Sanjay N. Dhavalikar
State Information Commissioner
Goa State Information Commission
Panaji - Goa

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