

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty 12/2021
in
Appeal No. 30/2021

Mr. Ramchandra Anil Raikar,
R/o. E3/3, Naika Vaddo,
Ida Maria Resort, Calangute,
Bardez-Goa

..... Appellant

v/s

1. The Public Information Officer (PIO),
Village Panchayat of Calangute,
Calangute, Bardez-Goa
2. First Appellate Authority (FAA),
Block Development Officer,
Bardez-Goa

..... Respondents

Relevant dates emerging from appeal:

Order passed in Appeal No. 30/2021	: 01/09/2021
Show cause notice issued to PIO	: 17/09/2021
Beginning of Penalty Proceeding	: 08/10/2021
Decided on	: 30/12/2021

ORDER

1. The penalty proceeding against the Respondent Public Information Officer (PIO) has been initiated vide showcause notice dated 17/09/2021 issued under section 20(1) and /or section 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 directions of the First Appellate Authority (FAA) and for non furnishing the information to the appellant.

2. The Commission has discussed complete details of this case in the order dated 01/09/2021. Nevertheless, the facts are reiterated in brief in order to apprise the matter in its proper perspective.
3. The appellant, vide application dated 10/11/2020 had sought information on 8 points, regarding construction in the property bearing survey No. 165/01 and 483/01 of Village Panchayat Calangute. The PIO did not furnish the information within the stipulated period and hence the appellant filed first appeal dated 17/12/2020. The FAA vide order dated 19/01/2021 directed PIO to furnish the information within 15 days. The appellant, while filing second appeal before this Commission contended that the PIO did not comply with the order of the FAA and prayed for complete information, compensation and penalty be imposed on the PIO.
4. The Commission, after due proceeding disposed the appeal vide order dated 01/09/2021. The PIO did not appear before the Commission even once, despite of number of opportunities given to him. Hence the appeal was decided on the basis of submissions and arguments of the appellant and reply filed by the FAA. The Commission concluded that the PIO has not only failed to adhere to the provisions of the Act, but also has shown disrespect to the Act by not complying with the order of the FAA and by not furnishing the information to the appellant. It was decided that such a lapse on the part of the PIO is punishable under section 20(1) and 20(2) of the Act. Therefore show cause notice was issued to the PIO seeking his reply as to why penalty under section 20(1) and or 20(2) should not be imposed on him, as provided in the Act.

5. The penalty proceeding was initiated against Shri. Raghuvir Bagkar, PIO and Secretary of Village Panchayat Calangute. Shri. Bagkar appeared alongwith Advocate Kapil Kerkar on 08/10/2021 and sought time to file reply. Subsequently on 28/10/2021 the PIO filed reply and later on 25/11/2021 filed another reply alongwith enclosures. The appellant neither appeared, nor filed any submission.
6. The PIO stated in reply that he has duly complied with order passed by the FAA and furnished the information to the appellant vide letter dated 19/01/2021, on the day the directions were issued by the FAA. That he remained absent before the Commission during the hearing of second appeal under bonafide belief since the information was already furnished to the appellant. The PIO further contended that since the information has been furnished even before the second appeal was filed, though there is a marginal delay in furnishing the information, this delay should not be visited with penalty, because he did not withheld the information malafidely and deliberately.
7. After the perusal of the records of this case, the Commission observes that the PIO has furnished the information to the appellant, thereby he has complied with order of the FAA. However, it was wrong on the part of the PIO to not to appear before the Commission during the hearing of second appeal. Had he appeared then, he could have brought on record these facts.
8. Hon'ble High Court of Bombay at Goa bench, in writ petition No. 205/2007, Shri. A. A. Parulekar V/s Goa State Information Commission has held:-

"The Order of Penalty for failure is akin to action under Criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."

9. In the present case, the PIO has furnished the information, though after the stipulated period of 30 days. There is no convincing and sufficient evidence on record attributing malafide on the part of the PIO. Thus, subscribing to the ratio as laid down by the Hon'ble High Court of Bombay, as mentioned above, the present case does not warrant levy of penalty on the PIO.
10. Considering the facts of this case, the penalty proceeding against the PIO is dropped. The matter is disposed and proceeding stands 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