

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 43/2019/SCIC
In Appeal No. 117/2019/SCIC

Shri Jawaharlal T. Shetye,
H. No. 35/A, Ward No. 11,
Khorlim, Mapusa Goa, 403507
v/s

.....Appellant

Public Information Officer,
Main Engineer-I (Diniz D'Mello),
Mapusa Municipal Council,
Mapusa-Goa 403507

.....Respondent

Relevant dates emerging from appeal:

Order passed in Appeal 117/2019	: 06/11/2019
Show cause notice issued to PIO	: 07/11/2019
Beginning of penalty proceeding	: 26/11/2019
Decided on	: 05/11/2021

ORDER

1. The Penalty proceeding has been initiated against the Respondent Public Information Officer (PIO) under section 20 (1) and /or section 20(2) of the Right to Information Act, 2005 (for short, the Act) for not furnishing the information to Appellant and for not complying with the order of the First Appellate Authority (FAA). The details of this matter are mentioned in the order dated 06/11/2019. However, the facts are reiterated in brief in order to appreciate the matter in its proper perspective.
2. The Appellant had sought under section 6(1) of the Act, information from the PIO. The PIO did not reply within the stipulated period of 30 days. Considering this as deemed refusal, the Appellant filed appeal before First Appellate Authority (FAA). The FAA failed to dispose the said appeal within the prescribed period and therefore, Appellant preferred second Appeal before this Commission under section 19(3) of the Act.

3. The Commission, after hearing both parties disposed appeal vide order dated 06/11/2019. The Commission concluded that the Appellant is entitled for the information, however no information was furnished by the PIO. The FAA also failed to dispose the first appeal as contemplated under section 19(6) of the Act. The Commission, in its order, directed PIO to furnish the information to the Appellant and asked PIO to show cause as to why penalty under section 20(1) and or 20(2) should not be initiated against him.
4. Accordingly show cause notice dated 07/11/2019 was issued to PIO and penalty proceeding was initiated. Shri. Diniz D'Mello the then PIO, Mapusa Municipal Council appeared and sought time to file reply. Subsequently reply dated 18/12/2019 was filed by the PIO. In the meanwhile the then State Chief Information Commissioner, before whom this matter was being heard, demitted office upon completion of tenure and proceeding came to a halt. The hearing resumed after the joining of new Commissioner. Fresh notice was issued to both the parties for registering their say.
5. The Respondent PIO, in his reply stated that as per the directions of the Commission the PIO has furnished the information vide letter dated 05/12/2019 along with all available documents without charging the fees. That his difficulty to furnish information in time is genuine and not to cause any hardship or inconvenience to the Appellant. The PIO prayed for lenient view by the Commission and has rendered apology and undertaken to abide by the provisions of the Act while dealing with RTI matters in future.
6. In spite of opportunity given on number of occasions, the Appellant decided to remain absent, except once on 06/10/2021. However, he has not filed any say or arguments before the Commission.
7. From the records it is clear that the PIO failed to furnish the information to the Appellant within the stipulated period. However later PIO furnished the information as per the directions of the Commission. He has apologized for the delay and has undertaken to abide by the provisions of the Act. In this background there is no sufficient evidence to conclude that PIO's initial failure to furnish information was intentional or malafide.

8. The Hon'ble High Court of Bombay, Goa Bench at Panaji in a Writ Petition No. 205/2007, Shri A.A. Parulekar V/s Goa State Information Commission has observed,

"The Order of Penalty for failure is a keen 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 light of above discussion and subscribing to the above mentioned ratio laid down by the Hon'ble High Court of Bombay at Goa bench, the Commission is of the opinion that, the facts and circumstances of the present case do not warrant levy of penalty on the PIO.

10. Hence, the penalty proceeding against the PIO is dropped. The matter is disposed and 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