

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 09/2021

In

Appeal No. 01/2020

Shri Shrikant V. Gaonker,
FA 501/505 Sinari Apartments,
Near Datta Mandir, Patto,
Ribandar Goa 403006.

..... Appellant

v/s

1. The Public Information Officer,
Office of the Corporation of the City of Panaji,
Municipal Bldg., Panaji Goa 403001.

2. The First Appellate Authority,
Office of the Corporation of the City of Panaji,
Municipal Bldg.,
Panaji Goa 403001.

..... Respondents

Relevant dates:

Order passed in Appeal 01/2020	: 25/08/2021
Show cause notice issued to PIO	: 15/09/2021
Beginning of Penalty Proceeding	: 24/09/2021
Decided on	: 29/04/2022

ORDER

1. The penalty proceeding against the Respondent Public Information Officer (PIO) has been initiated vide show cause notice dated 15/09/2021 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 for non furnishing the information to the appellant.
2. The Commission has discussed complete details of this case in the order dated 25/08/2021. Nevertheless, the facts are reiterated in brief in order to apprise the matter in its proper prospective.

3. The appellant vide application dated 09/07/2019 had sought information on seven points from the PIO. Being aggrieved with the information furnished, he filed first appeal dated 05/09/2019 before the First Appellate Authority (FAA). FAA failed to dispose the appeal within the mandatory period, hence appellant filed second appeal before the commission.
4. The Commission, after due proceeding disposed the appeal vide order dated 25/08/2021. It was held that the PIO is guilty of not furnishing complete and correct information to the appellant. The Commission concluded that the conduct of the PIO is not in consonance with the Act and such a lapse is punishable under section 20 of the Act. The Commission, vide the said order, directed PIO to showcause as to why action as contemplated under section 20(1) and 20(2) of the Act, should not be initiated against her.
5. The penalty proceeding was initiated against Smt. Roshell Fernandes, the then PIO. Smt. Roshell Fernandes appeared before the Commission on 24/09/2021 and requested for time to file reply. Subsequently on 28/03/2022 she filed reply alongwith the enclosures.
6. PIO stated that reply was furnished by her to the appellant based on the available information. The application dated 09/07/2019 was replied by her on 08/08/2019, within the stipulated period. The additional information furnished vide letter dated 03/10/2019 was the updated status of the complaint filed by the appellant. The appellant sought time to go through the data and thereafter hearing on first appeal continued, however the PIO was transferred on 05/12/2019 and hence is unaware of what transpired in the appeal before the FAA thereafter.

PIO further stated that no misleading or incorrect statement has been furnished by her. She submitted that she was never served the notice of the second appeal and that she came to know about the proceeding only after receiving showcause notice. She has acted in judicious manner while deciding the matter as PIO and has not acted malafidely, nor has deliberately denied or given incorrect information to the appellant. With this, PIO prayed for withdrawal of show cause notice.

7. Appellant submitted that inspite of the direction from the Commission, the present PIO has not furnished the complete information, hence he request the Commission to initiate contempt proceeding against the PIO.
8. After careful perusal of the records of this case, the Commission observes that the PIO had furnished the available information to the appellant within the stipulated period. Additional information was also furnished by her during the proceeding of the first appeal, on the direction of the FAA. Appellant was aggrieved since complete information was not furnished, however it is now clear from the records that the PIO vide reply dated 08/08/2019 and 03/10/2019 had furnished the available and updated information. Appellant was mainly aggrieved due to non disposal of first appeal by the FAA. Smt. Roshell Fernandes, the then PIO could not appear before the Commission during the proceeding of second appeal since the notice issued to her on the address of Corporation of the City of Panaji was not served to her at her present posting.
9. The appellant, during the penalty proceeding stated that he is not aggrieved with the then PIO as she had furnished the available information. He is aggrieved with the FAA for not deciding the appeal and with the present PIO for not furnishing the remaining information. However, the Act does not provide for penalty action against the FAA, similarly the Act does not provide for initiating contempt proceeding against the present PIO.
10. The Commission therefore concludes that Smt. Roshell Fernandes, the then PIO of Corporation of the City of Panaji cannot be held guilty for not providing complete information. Similarly, the Commission notes that she could not appear during the proceeding of second appeal as the notice was not served to her by the present PIO/Office of the Corporation of the City of Panaji. Therefore, no malafide on the part of Smt. Roshell Fernandes, the then PIO is established.
11. 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 that:-
"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."
12. Subscribing to the ratio laid down by the Hon'ble High Court of Bombay, as mentioned above, and considering the findings of

the Commission in the matter, the present case does not warrant levy of penalty on the then PIO.

13. Thus, the show cause notice issued against Smt. Roshell Fernandes, the then PIO stands withdrawn and the Penalty proceeding is dropped. The matter is disposed and the 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