

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 07/2022
In
Appeal No. 26/2021/SIC

Mr. Stephan Coutinho,
H. No. 70, Camarazana,
Mapusa Bardez-Goa 403507

..... Appellant

V/s
Public Information Officer,
Mapusa Municipal Council,
Mapusa-Goa 403507

... ..Respondent

Relevant dates emerging from Penalty proceeding:

Order passed in Appeal No. 26/2021	: 25/03/2022
Show cause notice issued to PIO	: 25/03/2022
Beginning of penalty proceeding	: 22/04/2022
Decided on	: 30/06/2022

ORDER

1. The Penalty proceeding against the Respondent Public Information Officer (PIO) has been initiated vide show cause notice dated 25/03/2022 issued under sub section (1) and (2) of section 20 of the Right to Information Act, 2005 (hereinafter referred to as 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 25/03/2022. Nevertheless, the facts are reiterated in brief in order to apprise the matter in its proper perspective.
3. The appellant, vide application dated 28/09/2020 had sought certain information from the PIO. Upon not receiving any information within the stipulated period, he filed first appeal before the First Appellate

Authority. Being aggrieved by the order of the FAA, the appellant filed second appeal before the Commission.

4. The Commission, after due proceeding disposed the appeal vide order dated 25/03/2022. It was held that the PIO is guilty of not furnishing the information under section 7(1) of the Act and said conduct of the PIO is punishable under section 20 of the Act. The Commission, vide the said order directed the PIO to showcause as to why action as contemplated under section 20(1) and 20(2) of the Act should not be initiated against him.
5. The penalty proceeding was initiated against Shri. Vyankatesh Sawant, the then PIO. Pursuant to the notice, Shri. Vyankatesh Sawant filed a reply received in the registry on 18/04/2022 and Shri. Prashant Narvekar, the present PIO filed a reply received in the registry dated 05/04/2022. Shri. Sawant appeared before the Commission on 22/04/2022 and filed a submission on 09/06/2022. Advocate A. Andrade appeared on behalf of the appellant.
6. Shri. Vyankatesh Sawant, PIO stated that he was unable to furnish the information mainly because the details provided in the application i.e. survey number is not sufficient to trace the concerned file. Municipal records are maintained based on construction licence number, occupancy certificate number, house number etc. Appellant, inspite of request from the PIO, has failed to furnish these details, hence he was not in a position to provide the requested information to the appellant. However he has not denied the information and has made repeated efforts to trace the information. PIO further stated that there is no malafide intention on his part to deny the information.

7. Upon perusal of the records of this matter, the Commission notes that though the PIO has not furnished the requested information, he has made efforts to trace the same, yet he could not furnish the information since he does not have the required details of the concerned file. It is seen that the PIO had requested the appellant to furnish the relevant details in order to enable him to trace the information. Further Shri. Prashant Narvekar, the present PIO vide letter dated 21/04/2022 issued to the appellant, has stated that the concerned records could not be traced since the relevant details are not available. PIO has requested the appellant to visit his office to inspect the documents and identify the information so that the same can be furnished.
8. The Commission, therefore is of the opinion that though the PIO was held guilty for contravention of section 7(1) of the Act, for not furnishing the information, it has been established that he is unable to furnish the information as the relevant details like construction licence number, occupancy certificate number, house number are not provided by the appellant and in view of this, the requested information cannot be traced. Therefore, no malafide on the part of the PIO is established.
9. Hon'ble High Court of Bombay at Goa, 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."
10. Subscribing to the ratio laid down by the Honble High Court, as mentioned above, and considering the findings of the Commission in the matter, the present case does not warrant levy of penalty under section 20 of the Act on the then PIO Shri. Vyankatesh Sawant.

11. Thus, the showcause notice issued against Shri. Vyankatesh Sawant, 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