

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 11/2022

In

Appeal No. 167/2020/SIC

Shri Kashinath Shetye,
102, Raj Excellency,
Patto, Ribandar, Tiswadi Goa.

-----Appellant

v/s

1) The Public Information Officer,
Directorate of Education,
Porvorim – Goa.

2) The Public Information Officer,
Don Bosco High School,
Panaji – Goa.

3) The Public Information Officer,
Mary Immaculate Girls High School,
Panaji – Goa.

4) The Public Information Officer,
People’s High School,
Panaji – Goa/Cujira, Bambolim Goa.

5) The Public Information Officer,
Mushtifund High School,
Cujira, Bambolim–Goa.

6) The Public Information Officer,
Dr. K.G. Hedgewar High School,
Panaji – Goa.

7) The Public Information Officer,
Our Lady of the Rosary High School,
Dona Paula–Goa.

8) The First Appellate Authority/(Formal Party),
Dy. Director of Education,
Central Education Zone,
Panaji – Goa.

-----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 167/2020/SIC	: 29/04/2022
Show cause notice issued to PIO	: 16/05/2022
Beginning of penalty proceeding	: 03/06/2022
Decided on	: 12/09/2022

ORDER

1. The penalty proceeding against Shri. Avin Carvalho, Public Information Officer (PIO), Headmaster, Don Bosco High School, Panaji-Goa has been initiated vide show cause notice dated

16/05/2022 issued under Section 20 (1) and 20 (2) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') for his failure to furnish complete information, which amounts to contravention of Section 7 (1) of the Act, and for not complying with the direction of the authority.

2. The complete details of this case are discussed in the order of this Commission dated 29/04/2022. However, the facts are reiterated in brief in order to steer through in its proper prospective.
3. The appellant vide application dated 27/05/2020 filed under Section 6(1) of the Act, had sought certain information. PIO failed to furnish complete information, hence appellant filed first appeal dated 16/07/2020. The FAA disposed the appeal vide order dated 14/09/2020 directing the PIO to furnish the information. However, PIO failed to comply with the directions of FAA. Being aggrieved, appellant filed second appeal before the Commission.
4. The Commission, after hearing both the sides disposed the appeal vide order dated 29/04/2022. It was concluded that, PIO is guilty of not furnishing the information within 30 days from the date of application as mandated under Section 7 (1) of the Act, for not complying with the FAA's order which amounts to de-reliction of duty. The Commission found that, the PIO did not furnish complete information and the conduct of the PIO was not in consonance with the Act and such a lapse on the part of the PIO is punishable under Section 20 (1) and 20 (2) of the Act. Therefore, the PIO was issued showcause 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. Avin Carvalho, Public Information Officer (PIO), Headmaster, Don Bosco High School, Panaji-Goa. Shri. Micheal Serrao appeared before the Commission on behalf of respondent PIO. Submission dated 27/05/2022 on behalf of PIO was received in the registry on 31/05/2022 and another submission was filed in the registry on 07/07/2022. Appellant filed rejoinder dated 03/06/2022 to PIO's reply. Another reply was filed on behalf of the appellant on 20/06/2022 by Shri. John Nazareth, authorized representative of the appellant.
6. PIO contended that, he has not denied the information with malafide intention or unreasonable cause but rather expressed unwillingness to give the copies of residence certificate only taking into consideration the representation made by the teachers who are a third party under Section 11 of the Act.

PIO further stated that, Shri. John Nazareth, representative of the appellant visited PIO's office, but when asked to scrutinize the records of the teachers for the purpose Residence Certificate, he refused saying that he wishes to have only certified copies and did not go through the records. In the light of above facts, no reason or cause is deemed fit for showcause notice. Consequent to order of the Commission, PIO has furnished available Residence Certificate of some teachers and copies of Employment Exchange Cards of the remaining teachers.

7. On the other hand, appellant stated that, the PIO has not produced copy of notice issued to third party teachers under Section 11 of the Act, and their objection letters as required under the Act.

Also that, the representative of appellant when visited PIO's office was made to sit around two hours and finally was rejected the information. If Residence Certificate of all the teachers were not available than how come notice was served to the teachers who have not submitted their Residence Certificate and how did they object to disclosure of the certificate which were never submitted, hence, PIO made a false statement while trying to evade the information.

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 vide application dated 27/05/2020 had sought information pertaining to names and copy of Residence Certificate of all teachers in some schools in Tiswadi taluka. PIO furnished list of names of teachers, however under Section 8 (1) (j) of the Act denied information pertaining to Residence Certificate of teachers claiming the said information as personal information. Upon not getting the complete information appellant filed first appeal and the FAA vide order dated 14/09/2020 directed PIO to furnish the information. PIO did not comply with the order, hence appellant filed second appeal before the Commission, the proceeding continued for more than 18 months, PIO's representative appeared regularly, however did not furnish the remaining information.
9. During penalty proceeding Shri. Micheal Serrao, representative of the PIO, Shri. Avin Carvalho appeared before the Commission and filed submission on 31/05/2022 claiming that the information has been furnished. On the other hand, appellant stated that, he has received some Residence Certificates and some Employment Cards. It is observed that, appellant has requested for Residence Certificates and not Employment Cards. The authority is required to maintain Residence Certificate of the teachers and other employees and as

already held, the said information is not exempted from disclosure. PIO is required to furnish the same to the appellant.

10. The Commission observes that, information furnished during the stipulated period was incomplete. No more information was furnished after FAA's directions. Similarly, no additional information was furnished within 20 days from the receipt of the order as directed by the Commission vide order dated 29/04/2022. Later, during the penalty proceeding, PIO furnished some information which includes Residence Certificates of some teachers. However, complete information is still not furnished. Also, PIO was not able to explain why he does not have Residence Certificate of all the teachers and if not, how come notice under Section 11 of the Act was issued to teachers (third party) and the teachers objected furnishing of the said documents which were never submitted by them to the authority.

11. RIT Act has been brought to bring transparency and accountability in the public administration. Here in this case, appellant contends that he was seeking the said information in order to unearth the alleged corruption in the process of recruitment of teachers in Government-aided schools. The said information is in public domain and PIO was required to furnish the complete information.

12. Hence, the Commission concludes that, the failure of the PIO to furnish the complete information amounts to contravention of Section 7 (1) of the Act and thus the guilty PIO is liable for penal action under Section 20 (1) of the Act.

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 yet another matter, the Hon'ble High Court of Bombay at Goa, 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 incomplete information after much delay, guilty of not complying with FAA's directions also guilty of disrespecting the Commission by not furnishing the complete information inspite of the clear direction from the Commission.

18. From the conduct of the PIO it is clearly inferred that, he has knowingly and deliberately evaded the disclosure of the information. The said act of the PIO amounts to showing disrespect towards the provisions of the Act and also towards the higher authorities. Such a

conduct is totally unacceptable vis-à-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.

19. Hence, the Commission passes the following order in the present penalty matter:-

- a. The respondent PIO, Shri. Avin Carvalho, Public Information Officer (PIO), Headmaster, Don Bosco High School, Panaji-Goa shall pay Rs. 6,000/- (Rupees Six Thousand only) as penalty for contravention of Section 7 (1) of the Act, for delay in furnishing the information, for furnishing incomplete information and not honouring the direction of this Commission.
- b. Aforesaid amount of penalty shall be deducted from the salary of PIO in two installments of equal amount of Rs. 3,000/- each beginning from the salary of the month October 2022 to November 2022 and the amount shall be credited to the Government treasury.
- c. The Registry is directed to send copy of this order to the Director, Directorate of Education, Govt. of Goa, Porvorim-Goa for information and appropriate action.

20. With the above direction, the present penalty 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