

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No.12/2022

In

Appeal No. 28/2022/SIC

Smt. Agnes D Silva,
R/o. Madda Wadda,
Calangute, Bardez-Goa.

-----Appellant

v/s

The Public Information Officer,
The Secretary of Village Panchayat of Calangute,
Bardez-Goa.

-----Respondent

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 28/2022/SIC	: 13/05/2022
Show cause notice issued to PIO	: 19/05/2022
Beginning of penalty proceeding	: 24/06/2022
Decided on	: 26/09/2022

ORDER

1. The penalty proceeding has been initiated against the Respondent Public Information Officer (PIO) under Section 20 (1) and /or 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 order of First Appellate Authority (FAA) and for non furnishing the complete information.
2. The complete details of this case are discussed in the order of this Commission dated 13/05/2022. However the facts are reiterated in brief in order to steer through in its proper perspective.
3. The Appellant vide application dated 26/10/2021 had sought under section 6 (1) of the Act information on 07 points. The PIO failed to furnish the information and appellant filed first appeal dated 07/12/2021 before the First Appellate Authority (FAA). The FAA disposed the appeal vide order dated 04/01/2022 directing PIO to furnish the information to the appellant free of cost within 15 days. PIO failed to comply with the directions of FAA and being aggrieved by the inaction of the PIO, the appellant filed second appeal dated 28/01/2022 praying for information and penalty to be imposed on PIO under section 20(1) and 20(2) of the Act.

4. The Commission, on merits disposed the appeal vide order dated 13/05/2022. It was concluded that the PIO is guilty of not replying to the appellant within 30 days from the date of application, as mandated under section 7(1) of the Act, for not complying the FAA's order which amounts to dereliction of duty and for disrespecting the proceeding of this Commission. The Commission found that the PIO did not furnish complete information and the conduct of the PIO is not in consonance with the Act and such a lapse on the part of PIO is punishable under section 20 (1) and 20(2) of the Act. Thereafter, the PIO was issued show cause 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. Raghuvir D. Bagkar, PIO and the then Secretary of Village Panchayat Calangute. Appellant appeared before the Commission regularly insisting on the information and praying for imposition of penalty on the PIO. Shri. Raghuvir D. Bagkar, the then PIO appeared and filed reply on 24/06/2022. Appellant filed counter reply cum written arguments on 17/08/2022.
6. PIO, vide his reply contended that unprecedented situation created by the second wave of COVID-19, lasted for more than 08 months and he alongwith his colleagues were assigned COVID duty including managing the COVID vaccination centre. In the process he could not keep track of the application and proceeding before the appellate authorities. PIO further stated that the Hon'ble Supreme Court, considering the COVID situation had suspended period of limitation from 15/03/2020 to 28/02/2022, hence leniency may be shown to him.

PIO also contended that later, the staff of Village Panchayat Calangute was assigned the election duty and he was posted at Vasco for election duty and in March 2022 he was transferred to Sancoale Village Panchayat as Secretary/ PIO. That in this schedule he could neither furnish the information, nor attend the proceeding before authorities and that he has not acted in negligent manner.
7. Appellant stated that the PIO has taken advantage of the COVID situation to cover-up his careless attitude towards non furnishing of the information. Application for information was filed on 26/10/2021 and during the stipulated period of 30 days there was no lockdown declared by the Government. All Government offices were functioning, hence PIO was required to furnish the information.

Appellant further stated that, the second shield used by the PIO regarding election duty is also false, since the PIO has not furnished any Government order to substantiate his contention. Also that the Act does not provide relief to the PIO from furnishing the information if he is busy in some other work.

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 had filed application on 26/10/2021 to which PIO did not bother to reply. Section 7 (1) mandates PIO to respond to the application within 30 days. The appellant filed first appeal and the FAA vide order dated 04/01/2022 directed PIO to furnish the information within 15 days. PIO neither remained present before the FAA, nor complied with the order of FAA, who is his superior officer. Later, appellant filed second appeal before the Commission. Repeated opportunities were given to PIO to appear and file his say, however, he preferred to remain absent throughout and filed no reply during the entire proceeding of second appeal.
9. During the penalty proceeding PIO Shri. Raghuvir Bagkar appeared once on 24/06/2022 and filed reply, however, never turned up for the further hearing, did not even collect the copy of counter reply/written arguments filed by the appellant. On the contrary, appellant, who is a senior citizen, visited PIO's office seeking the information, appeared regularly before the Commission during the proceeding of second appeal as well the present penalty proceeding.
10. It is observed by the Commission that the PIO has claimed that he was unable to furnish the information first due to COVID situation and then because of election duty. The Commission does consider that the COVID situation was indeed alarming, however, no public authority office was shut under lockdown during the stipulated period of the application. Every Government office was operational with appropriate precautions and PIO was required to respond to the application and furnish the information to the appellant. It is noteworthy that the FAA heard and disposed the appeal. Later the Commission heard and disposed the appeal, both the appellate authorities directed PIO to furnish the information, yet the adamant PIO did not comply with these orders. Also, as stated by the appellant, the PIO has not produced any order or communication from the Government issued to him, to substantiate his contention regarding his engagement during COVID situation.

11. The second excuse the PIO has taken is that of election duty. As mentioned in para 10 above, PIO has only claimed to be busy in election duty, has not furnished any Government Order or communication to substantiate his contention. Therefore, the Commission cannot accept his claim of election duty. It is also noted that the Assembly election was held on 14/02/2022 and the PIO, presuming that he was busy in election duty, could have appeared on 07/04/2022 and /or 13/05/2022 when hearing of the appeal was held before the Commission. However, PIO neither appeared, nor made attempt to furnish the information.

12. In the background of the facts mentioned above, the Commission is completely convinced that the PIO has denied the information to the appellant with malafide intentions and later has tried to cover-up his misdeeds by giving excuses of COVID situation and election duty. This conduct of PIO is deplorable, disgraceful, not at all in consonance with the aim and provisions of the Act and thus the Commission in no way can subscribe to such a shameful conduct. This being the case, the Commission is of the view that such officer should not be shown any leniency and must be punished under Section 20 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. In another matter, the Honorable High Court of Gujarat in Special Civil application no. 8376 of 2010 in the case of Umesh M. Patel V/s State of Gujarat has held that penalty can be imposed on PIO if First Appellate Authority's order is not complied. In yet another matter the Honorable High Court of Bombay at Goa Bench 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.
16. Subscribing to the ratio laid down by Hon'ble High Courts in above mentioned judgments, the PIO in the present matter is held guilty for not furnishing the information and not complying with the directions of the FAA and the Commission.
17. From the conduct of the PIO, it is clearly inferred that the PIO has no concern to his obligations under the Act and has no respect towards the higher authorities, such a conduct is totally unacceptable vis-a-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.
18. Hence, the Commission passes the following order:-
 - a) The respondent PIO, Secretary, Village Panchayat of Calangute, Shri. Raghuvir D. Bagkar shall pay Rs. 8,000/- (Rupees Eight Thousand only) as penalty for contravention of Section 7 (1) of the Act and for not complying with the order of the FAA and the Commission.
 - b) Aforesaid amount of penalty shall be deducted from the salary of PIO in two installments of equal amount of Rs. 4,000/- each beginning from the salary of the month of 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 Block Development Officer, Bardez, Mapusa-Goa and Director, Directorate of Panchayats, Government of Goa for information and appropriate action.
19. With the above directions 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