

GOA STATE INFORMATION COMMISSION

“Kamat Towers” 7th Floor, Patto Plaza, Panaji, Goa – 403 001

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 14/2021

In

Appeal No. 122/2021/SIC

Shri Deepak Gracias,
R/o. Karishma Apartments,
'C' Block, Near Cine Vishant,
Aquem, Margao Goa 403601.

-----Appellant

v/s

1. The Public Information Officer,
The Director of Municipal Administration,
Dempo Towers, 1st Floor,
Patto, Panaji-Goa.

2. The First Appellate Authority,
The Director of Municipal Administration,
Dempo Towers, 1st Floor,
Patto, Panaji-Goa.

-----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 122/2021/SIC	: 25/10/2021
Show cause notice issued to PIO	: 29/10/2021
Beginning of penalty proceeding	: 25/11/2021
Decided on	: 12/09/2022

ORDER

1. The penalty proceeding against Shri. Clen Madeira, Public Information Officer (PIO), Director of Municipal Administration, Panaji-Goa has been initiated vide show cause notice dated 29/10/2021 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 Commission.
2. The complete details of this case are discussed in the order of this Commission dated 25/10/2021. However, the facts are reiterated in brief in order to steer through in its proper prospective.
3. The appellant vide application dated 15/02/2021 had sought certain information. Upon not receiving any reply from the PIO he filed appeal before the First Appellate Authority (FAA). No order was passed by the FAA, hence the second appeal was filed by the appellant against PIO and FAA.

4. The Commission, after hearing both the sides disposed the appeal vide order dated 25/10/2021. It was held that, conduct of the PIO is contrary to the requirements of the Act and that the PIO has failed to honour the provisions of the Act and by not furnishing the information is responsible for contravention of Section 7 (1) of the Act. The Commission in the said order observed that, the conduct on the part of the PIO is deplorable and in no way can be subscribed, and directed PIO to show cause as to why penalty under Section 20 (1) and /or 20 (2) of the Act should not be imposed against him.
5. Penalty proceeding was initiated against Shri. Clen Madeira, PIO, Additional Director, Director of Municipal Administration. Appellant appeared before the Commission and filed rejoinder dated 22/02/2022, submission dated 22/06/2022 and another submission on 22/07/2022. Shri. Clen Madeira appeared alongwith Ms. Firdous Saba Bepari and filed reply dated 07/01/2022, affidavit in reply received in the entry registry dated 19/05/2022 and compliance report on 12/07/2022.
6. PIO stated that, his office had issued a reply on 08/03/2021 to the appellant to collect certified copies, however the said reply was not brought on record by the appellant before this Commission. Appellant never turned up to collect the information and filed first appeal. Another letter was issued to the appellant on 13/09/2021 requesting him to inspect the records, yet he never visited PIO's office. Hence, the averments made by the appellant that he did not receive any information are false and baseless.

PIO further stated that, vide compliance report filed before the Commission on 12/07/2022 he has furnished information on point no. 1, 2, 3 and pertaining to information on point no. 4 and 5 stated as N.A.

7. Appellant submitted that, PIO has not furnished the complete information and has falsely claimed that the appellant did not collect the information. Further, PIO has intentionally delayed and denied the appellant requested documents. That, he had to bear financial loss and mental harassment due to non furnishing of the information within the stipulated period. Further, the PIO has avoided /delayed furnishing of information, available in his record.

Appellant further submitted that he wishes to produce records showing his presence before the public authority on number of occasion from 26/01/2019 to 30/09/2021 and that he has furnished a memo alongwith enclosures before the Commission on 22/06/2022

which shows that the appellant has visited the office of the public authority.

8. The Commission has perused the records of the appeal as well as present penalty proceeding. It is noted that, the PIO has produced copy of reply dated 08/03/2021 sent to the appellant, as contended by him, however there is no evidence to substantiate that the same was dispatched from his office within the stipulated period. Appellant filed first appeal, however the same was not heard by the FAA. Later, appellant filed second appeal before the Commission. PIO neither appeared, nor deputed any representative and filed no submission. The appeal was finally decided vide order dated 25/10/2021 and the PIO was directed to furnish the information and showcause notice was issued to the PIO seeking his explanation on why penal action should not be initiated against him.
9. During the penalty proceeding, Shri. Clen Madeira, PIO appeared on 06/01/2022 alongwith Ms. Firdous Saba Bepari and subsequently was represented by Ms. Firdous Saba Bepari. The Commission observes that, the appellant has number of matters pending/ being heard before the Directorate of Municipal Administration and Director of the said authority is the designated FAA and Additional Director is the PIO, hence it was possible for the PIO to furnish the information to the appellant during any visit of the appellant to the office of PIO. On the contrary, PIO neither produced evidence of dispatch of reply dated 08/03/2021, nor furnished the information even during the proceeding of second appeal. What is more serious is the fact that, the PIO failed to furnish the information even after the direction of the Commission.
10. Finally, on 12/07/2022 Ms. Firdous Saba Bepari appeared on behalf of PIO, furnished information on point no. 1, 2, 3 and stated that, the information on point no. 4 and 5 is N.A. While responding to the said compliance report the appellant has stated that, the information provided is incomplete. The Commission finds that, no information was furnished during the stipulated period, no information was furnished as per the direction of the Commission and information furnished during the present penalty proceeding is incomplete. This reflects the callous attitude of the PIO towards the present matter and also towards the provisions of Act.
11. The said arrogant and careless conduct of the PIO is disgraceful, not at all in consonance with the aim of the Act, and thus, the Commission in no way can subscribe to such shameful conduct. Similar attitude of the PIO as described above is seen by the

Commission earlier in other matters as well as in some ongoing matters. Therefore, Commission is of the view that, such officer should not be shown any leniency and must be punished under Section 20 of the Act.

12. 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."

13. 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."

14. 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.

15. Honorable High Courts in number of matters have held PIO guilty of different acts like for 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 with the directions of the authorities designated under the Act 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 Commission concludes that PIO in the present matter is guilty of furnishing information after much delay, during the penalty proceeding and that too incomplete information; and also of not complying with the directions of the Commission.

16. From the conduct of the PIO, it is clearly inferred that he has no concern to his obligations under the Act and has no respect 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.

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

- a. The respondent PIO, Shri. Clen Madeira, Additional Director, Directorate of Municipal Administration shall pay Rs. 12,000/- (Rupees Twelve 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 four installments of equal amount of Rs. 3,000/- each beginning from the salary of the month October 2022 to January 2023 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 Municipal Administration, Panaji-Goa for information and appropriate action.

18. 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

