

GOA STATE INFORMATION COMMISSION

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

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in Website: www.scic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No.25/2022
In
Appeal No. 50/2022/SIC

Shri. Vishwanath B. Solienkar,
S1 Artic Apartment,
Behind Don Bosco Engg. College,
Fatorda, Margao-Goa 403602.

-----Appellant

v/s

1.The Public Information Officer,
Office of the Town Planner,
Town and Country Planning Department,
Margao-Goa.

2. The First Appellate Authority,
Senior Town Planner,
Town and Country Planning Department (South),
Margao-Goa.

-----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 50/2022/SIC	: 29/07/2022
Show cause notice issued to PIO	: 02/08/2022
Beginning of penalty proceeding	: 05/09/2022
Decided on	: 20/12/2022

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 for non furnishing complete information.
2. The complete details of this case are discussed in the order of this Commission dated 29/07/2022. However, the facts are reiterated in brief, in order to steer through in its proper perspective.
3. The appellant vide application dated 22/11/2021 had sought under Section 6 (1) of the Act, certain information from PIO. Upon not receiving any response within the stipulated period, he preferred appeal dated 23/12/2021 before the First Appellate Authority (FAA). The appeal was not heard by the FAA within the mandatory period as provided under Section 19 (6) of the Act. Being aggrieved, appellant

appeared before the Commission by way of second appeal, praying for information and penal action against the PIO.

4. The Commission, after hearing both the sides disposed the appeal vide order dated 29/07/2022. It was concluded that the PIO is guilty of not furnishing the information to the appellant, which amounts to contravention of Section 7 (1) of the Act and the said action deserves penal action under Section 20 of the Act. The Commission found that the PIO neither furnished complete information, nor sought more time to furnish the information and such conduct of the PIO is contrary to the requirements of the Act. Therefore, the PIO was issued show cause notice seeking his reply as to why penalty as provided in sub Section (1) and (2) of Section 20 of the Act, should not be imposed on him.
5. Penalty proceeding was initiated against Shri. Vinod Kumar Chandra, PIO, Office of the Town Planner, Town and Country Planning Department, Margao-Goa. Appellant choose not to appear before the Commission, whereas, Advocate Atish P. Mandrekar appeared on behalf of the PIO and filed reply dated 10/11/2022.
6. PIO, vide his reply contended that, after making through search of the office records the requested information was sent vide letter dated 22/03/2022 to the appellant. PIO further stated that, his dealing hand was posted on election duty from 01/01/2022 to 31/03/2022, as such PIO was unable to gather and compile the information. Also, PIO and his family tested Covid positive and was quarantined, hence he was unable to respond within the time limit to the appellant. That, delay to provide reply and the information is caused only because of unavoidable situation. PIO also submitted that, the requested information by the appellant pertaining to BPAMS was not readily available as the download option in the software was not provided as such, after resolving the technical issue the requested information was furnished to the appellant.
7. PIO further submitted that, the first appeal was not disposed by the FAA. Also, during the proceeding of the second appeal he had furnished the available information and he is not supposed to create any information or answer any question or give any opinion and nowhere any delay is caused in furnishing the information. PIO also stated that he tenders unconditional apology and requested the Commission to accept the apology and take a lenient view.

8. Advocate Atish P. Mandrekar argued on behalf of the PIO stating that, the information as available has been furnished to the appellant and the delay may be condoned since various reasons responsible for the delay are already on record. That, the PIO has not intentionally denied the information, on the contrary, has furnished the information as and when available. Advocate Mandrekar further argued that the PIO did not get an opportunity to justify his action before the FAA since the first appeal was not heard.
9. The Commission, after careful perusal of the records of the appeal which was disposed vide order dated 29/07/2022 and records of the present penalty proceeding, arrives at following observations and findings.
10. The appellant vide application dated 22/11/2021 had sought information on four points. He received no reply from the PIO within the stipulated period, hence filed first appeal before the FAA, and further filed second appeal since the FAA did not hear the first appeal. After the second appeal was filed, PIO issued a reply dated 22/03/2022, after more than three months from the date of application, without furnishing the complete information.
11. PIO has quoted three reasons for not being able to reply within the stipulated period. One- dealing hand was posted on election duty, Two- PIO was tested Covid positive and was quarantined, and Three- download option in BPAMS was not available. The Commission after examining the above mentioned reasons concludes as below:-

The application was submitted by the appellant on 22/11/2021 and dealing hand of PIO was deputed on election duty from 01/01/2022 to 31/03/2022, which makes it clear that the dealing hand was available till 31/12/2021 and the stipulated period of 30 days expired on 21/12/2021, meaning that the dealing hand was available with the PIO for the entire period of 30 days, inspite of that PIO took no efforts to furnish the information.

Regarding reason no. 2, as per the medical certificate attached along with the reply, it is noted that the PIO was tested positive for Covid-19 on 18/01/2022, which is after the stipulated period. PIO was required to furnish the information /reply on or before 21/12/2021, since the application was filed on 22/11/2021, which he failed to do. Hence, it appears that the information was not furnished intentionally.

Regarding reason no. 3, the argument of the PIO that the download option in the software was not available and that caused the delay, cannot be accepted. The said issue is of technical nature,

it is PIO's responsibility to get the fault rectified and furnish the information within the stipulated period. Public authority cannot deprive the applicant of the information for technical issue. It is the statutory right of the appellant to seek information from the public authority, which is available in public domain.

12. PIO has contended that, he never denied any information to the appellant and that he has nowhere caused any delay in furnishing the information. Consequently, it is noted that the PIO vide reply dated 22/03/2022 under Section 7 (9) of the Act has denied the information on point no. 4. PIO cannot deny the information under Section 7(9) of the Act, on the contrary the said section deals with the disposal of a request for information. PIO can deny only that information which is eligible for exemption under Section 8 or for rejection under Section 9 of the Act.

Similarly, reply dated 22/03/2022 was issued after more than three months from the date of application, after the second appeal was filed.

13. PIO has relied on direction issued by the Hon'ble Supreme Court in suo motu Writ Petition (c) No. 3 of 2020 which states that, the period from 15/03/2020 till 28/02/2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceeding.

Here, the Commission observes that, the period mentioned by the Hon'ble Supreme Court ended on 28/02/2022, whereas, the appeal proceeding before the Commission was completed and the order was passed on 29/07/2022. Similarly, PIO had another opportunity during the penalty proceeding to furnish the remaining information and request for pardon from penal action. Instead, the PIO, without complying with the order of the Commission, has tendered apology and requested the Commission to take a lenient view.

14. The Commission finds that the PIO has not furnished the remaining information to the appellant thereby defying the direction of the Commission issued vide order dated 27/07/2022 while disposing Appeal No. 50/2022/SIC. The Commission is completely convinced that the PIO has not made any further efforts to furnish the information to the appellant, such an adamant conduct of the PIO smells of malafide intention. The Commission cannot accept the excuses given by the PIO for not furnishing the complete information and for not complying with the direction of the Commission. Such

conduct of the PIO is not in consonance with the provisions of the Act, thus the Commission in no way can subscribe to the same. 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.

15. PIO while requesting leniency, has relied on Hon'ble High Court of Bombay at Goa Bench in Writ Petition 205/2007, Shri. A. A. Parulekar v/s Goa State Information Commission, Hon'ble High Court of Delhi in Bhagat Singh v/s CIC & Ors. WP (c) 3114/2007, Hon'ble High Court of Delhi in Col. Rajendra Singh v/s Central Information Commission, and Anr. WP (c) 5469 of 2008 and Hon'ble High Court of Bombay at Goa in Writ Petition No. 704 of 2012. However, the facts of the above referred matters are different than the present penalty proceeding.
16. 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."

17. 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."

18. 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.

19. Subscribing to the ratio laid down by Hon'ble High Courts in above mentioned judgments, and in the background of the findings of the Commission in the present penalty matter, the PIO is held guilty for contravention of Section 7 (1) of the Act. 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.
20. In the light of above discussion, the Commission passes the following order:-
- a) Shri. Vinod Kumar Chandra, the respondent PIO, shall pay Rs. 4,000/- (Rupees Four Thousand only) as penalty for contravention of Section 7 (1) of the Act and not furnishing information to the appellant.
 - b) Aforesaid amount of penalty shall be deducted from the salary of PIO of the month of 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 Chief Town Planner, Town and Country Planning Department, Government of Goa, for information and appropriate action.
21. 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