

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No.33/2022

In

Complaint No. 10/2022/SIC

Querobino P. Gomes,
R/o. H.No. 324, Praca de Rachol,
Salcete-Goa 403719.

-----Complainant

v/s

The Public Information Officer,
Mamlatdar of Salcete,
Margao, Salcete-Goa.

-----Opponent

Relevant dates emerging from penalty proceeding:

Order passed in Complaint No. 10/2022/SIC	: 22/08/2022
Show cause notice issued to PIO	: 23/08/2022
Beginning of penalty proceeding	: 03/10/2022
Decided on	: 28/11/2022

ORDER

1. The penalty proceeding has been initiated against Respondent Public Information Officer (PIO), 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 non compliance of the order of the Commission.
2. The complete details of this case are discussed in the order dated 22/08/2022 of the Commission. However, the facts are reiterated in brief in order to steer through in its proper perspective.
3. The complainant had sought certain information from PIO. He did not receive complete information inspite of the direction of the First Appellate Authority (FAA), hence, filed second appeal before the Commission. The Commission while disposing the said appeal directed the PIO to furnish remaining information. However, the direction was not complied by the PIO, hence complainant approached the Commission by way of complaint under Section 18 of the Act.
4. The Commission, after hearing both the parties disposed the complaint vide order dated 22/08/2022. It was concluded that the PIO is guilty of not adhering to the direction of the appellate authority designated under the Act, and for contravention of the Section 7 (1) of the Act. The Commission found that the PIO did not

furnish the information, amounting to non compliance of the order issued by the Commission on 13/01/2022 while disposing Appeal No. 10/2021/SIC. Later, while disposing the complaint No. 10/2022/SIC, it was found that the reply filed by the PIO, Shri. Laxmikant R. Dessai is not satisfactory and the PIO has shown no respect to the authority by not attending the proceeding.

5. The Commission found that the said conduct of the PIO is 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. Thereafter the PIO was issued show cause notice seeking his reply as to why penalty as provided in the Act should not be imposed on him.
6. Penalty proceeding was initiated against Shri. Laxmikant R. Dessai, PIO and the Mamlatdar of Salcete. The PIO, vide notice dated 23/08/2022 was directed to show cause as to why action as contemplated under Section 20 (1) and/ or 20 (2) of the Act should not be initiated against him. It was intimated to the PIO that he is required to file his reply in writing in person alongwith all the documents in support, on 03/10/2022 at 10.30 a.m. before the Commission.
7. The appellant appeared in person and stated that he has not received information, hence he presses for penal action as provided under Section 20 of the Act against the PIO. Neither PIO, nor his authorised representative appeared on 03/10/2022. Later, on 27/10/2022 Smt. Sharmila Sinai Kerkar, APIO appeared on behalf of the PIO and requested for time to file reply. The Commission granted time of one week and PIO was directed to file reply on or before 03/11/2022. However, to the utmost surprise of the Commission, no reply or no submission in any form is received from the PIO till the date of this order in the present penalty proceeding.
8. It is seen that the PIO has not furnished the information sought by the appellant, not complied with the direction of the Commission, not appeared before the Commission during the penalty proceeding and has not filed any reply to justify his action. Such an adamant approach and complete disrespect towards the provisions of the Act by the PIO is deplorable and hence, cannot be pardoned. 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.

9. The Hon'ble High Court of Madras in W.P. No. 3776 to 3778 of 2013, P. Jayashankar v/s. Chief Secretary of Government of Tamil Nadu has held: -

"15. Undoubtedly, Section 20 is penal in nature. The section itself mandatorily provides for a reasonable opportunity to an information officer before inflicting him with any penalty or recommending for disciplinary action. While Section 6 and 7 enables the information officer to dispose of the request made in an application, in case of their disobedience, the said Act enables the Information Commission to deal with such cases. The power of the Commission is provided under Section 18. Section 19 provides for an appeal. In case of refusal to furnish the information by the authority, the Information Commission can initiate an enquiry in respect of such refusal. Under Section 19, when an appeal is preferred, wherein an appropriate direction can be given for providing information, which is binding on the authorities concerned. It is only in cases, where the authorities have disobeyed the order of this Commission or there is specific findings of obligation of the public authority was not performed in terms of Section 6 and 7, the question of penalty or direction to take disciplinary action will arise."

In the instant case, the PIO has disobeyed the order of the Commission, wherein he was directed to furnish the information. Hence, subscribing to the ratio laid down in the above judgment, penal action against the PIO is justified.

10. The Hon'ble High Court of Himachal Pradesh in letters patent Appeal No. 4009 of 2013, Sanjay Bhagwati v/s. Ved Parkash and others has held in para 16:-

"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."

11. In yet another case, the Hon'ble High Court of Delhi in W.P. (c) 3845/2007, Mujibur Rehman v/s. Central Information Commission,

while maintaining the order of the 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 limits 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."

12. Subscribing to the ratio laid down in the above mentioned judgments, PIO is required to furnish correct and complete information in a time bound manner, similarly, PIO is mandated to comply with the direction of the appellate authority designated under the Act. In the present matter, it has been established that the PIO has failed to honour the provisions of the Act and he has no concern to his obligations under the Act. Such a conduct of the PIO 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.

13. Hence, the Commission passes the following order:-

- a) The respondent PIO, Mamlatdar of Salcete, Shri. Laxmikant R. Dessai shall pay Rs. 6,000/- (Rupees Six Thousand only) as penalty for contravention of Section 7 (1) of the Act and for not complying with the order of 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 of December 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 Chief Secretary, Government of Goa, Secretariat, Porvorim-Goa for information and appropriate action.

14. 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