

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. 05/2021

In

Appeal No. 145/2020

Shri. Oswald Fernandes,
H.No.1141, Muxivaddo,
Curtorim, Salcete-Goa

..... Appellant

v/s

1. The Public Information Officer (PIO),
Mr. Allauddin Maniyar,
Village Panchayat of Cavelossim,
Cavelossim, Salcete-Goa.

2. First Appellate Authority (FAA),
Mr. Amitesh Shirvoikar,
Block Development Officer – I,
Office of the BDO, Margao – Goa.

....Respondents

Relevant dates emerging from appeal:

| | |
|---------------------------------|--------------|
| Order passed in Appeal 145/2020 | : 30/07/2021 |
| Show cause notice issued to PIO | : 06/08/2021 |
| Beginning of Penalty Proceeding | : 27/08/2021 |
| Decided on | : 21/10/2021 |

ORDER

1. The penalty proceeding has been initiated against the Respondent Public Information Officer (PIO) under section 20(1) and /or section 20(2) of the Right to Information Act, 2005 (for short, the Act) for contravention of section 7 (1) of the Act and for delay in furnishing information and for his failure to safeguard records in his office.
2. The complete details of this case are mentioned in the order of this Commission dated 30/07/2021. However, the facts are reiterated in brief in order to appreciate the matter in its proper perspective.

3. The Appellant had sought under section 6(1) of the Act, information on 6 points vide application dated 05/06/2020. The PIO failed to furnish information and the Appellant filed first Appeal dated 10/07/2020 before the First Appellate Authority (FAA). The FAA disposed the Appeal vide order dated 03/09/2020 stating the information is furnished during the proceeding and therefore the Appeal is disposed. Aggrieved by the order of FAA, the Appellant filed second appeal dated 15/09/2020 praying for complete information and penalty to be imposed under section 20(1) and section 20(2) on PIO.
4. The Commission, after hearing both parties disposed the appeal vide order dated 30/07/2021. It was concluded that in view of the FIR being registered in the Police Station the Commission is unable to pass direction to the PIO to furnish information. However that itself does not absolve the PIO of his responsibility under the Act or the Act governing the Village Panchayat under which all relevant documents are required to be maintained. The Commission decided that the PIO is required to take responsibility of failure to safeguard the record and therefore was asked to show cause as to why penalty as provided under section 20(1) and 20(2) of the Act should not be imposed against him.
5. The penalty proceeding was initiated against the PIO, Shri. Allauddin Maniyar, PIO and Secretary of Village Panchayat of Cavelossim appeared before the Commission on 30/08/2021 and filed reply. The Appellant, Shri. Oswald Fernandes filed objections dated 05/10/2021 to the reply of PIO, later PIO filed written arguments dated 11/10/2021.
6. The PIO has contended vide his reply and written arguments that the part information sought by the Appellant is missing from the records of PIO's office. This was intimated to the Appellant, and inspection was allowed to him. Also upon realization of the fact that the documents are missing, the PIO filed complaint and registered

FIR dated 06/08/2020 in the Police Station, Colva. That the documents sought are as old as 2011, much before the appointment of the PIO as Secretary of Cavelossim Village Panchayat. There is no record available to establish that the said documents were available in the office at the time of joining of the present PIO, therefore he cannot be blamed for missing documents unless and until investigation is completed by the police. It is not appropriate to draw any conclusion as the matter is still under investigation by the concerned police. That the PIO has not denied the information, on the contrary has taken appropriate action after the realization of missing documents. That the PIO has no malafide intention, has cooperated with the Appellant and is not responsible for the missing information.

7. The Appellant states in his submission dated 05/10/2021 that the PIO is responsible for protecting the documents in his office and he has failed to safeguard the documents and files pertaining to issues of illegalities raised by the Appellant. The PIO has not only failed to furnish the information but has also failed to protect the information in his office. That Appellant has noticed that the person connected to the said documents and files has inspected the documents without supervision of PIO, therefore the onus of missing documents is on the PIO. The PIO has caused damage to the Village Panchayat by allowing violators/person with malafide intention to inspect the documents and files. By stating this, the Appellant has pressed for penalty for damages caused to the Village Panchayat by the PIO.
8. After careful perusal of the records and facts presented here, the Commission concludes that the PIO has failed to furnish complete information to the Appellant. However, it makes us believe that the said information could not be furnished because it is missing from the office PIO, when realized, filed a complaint in Colva Police Station. Appellant's contention regarding some person conducting inspection without the supervision of PIO and that the said person,

in collaboration with PIO, is responsible for missing documents could not be established during the proceeding. Also such investigation does not come under the jurisdiction of this Commission.

9. The Commission vide order dated 30/07/2021 has directed the Block Development Officer, Margao to monitor the inquiry of the Police Complaint/FIR filed by the PIO on 06/08/2020 in Colva Police Station. Also vide the same order the Commission has directed the Director of Panchayat to initiate appropriate proceedings against the Secretaries of the said Village Panchayat, responsible for missing of the documents.
10. In view of the measures mentioned above and the fact that there is no convincing and sufficient evidence on record attributing malafide on the part of the PIO, the Commission is of the opinion that, the facts and circumstances of the present case does not warrant levy of penalty on the PIO.
11. Hence the Penalty proceeding against the PIO is dropped. The matter is disposed and proceeding stand 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