

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 03/2022
In
Appeal No. 286/2021/SIC

Smt. Juliet Lobo D'Souza,
H. No. E/181, 'Casa Leao',
Cobravaddo, Calangute,
Bardez-Goa, 403516

-----Appellant

V/s

1. The Public Information Officer,
Mamlatdar of Bardez,
Mapusa, Bardez-Goa 403507
2. The First Appellate Authority,
Dy. Collector of Bardez,
Mapusa, Bardez-Goa 403507

-----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 286/2021/SIC	: 09/03/2022
Showcause notice issued to PIO	: 15/03/2022
Beginning of the Penalty proceeding	: 06/04/2022
Decided on	: 27/02/2023

ORDER

1. The penalty proceeding has been initiated against Respondent Public Information Officer (PIO), Mamlatdar of Bardez, Mapusa, Goa, under section 20(1) and 20(2) of the Right to Information Act, 2005 (for short the 'Act') for contravention of section 7(1) of the Act for not furnishing the information to the appellant.
2. The complete details of this case are discussed in the order of this Commission dated 09/03/2022. However, the facts are reiterated in brief in order to steer through in its proper perspective.
3. The appellant vide application dated 16/08/2021 had sought under section 6(1) of the Act, certain information from PIO, Mamlatdar of Bardez. The PIO did not respond within the stipulated period, hence appellant filed first appeal dated 20/09/2021 before FAA, Deputy Collector of Bardez. FAA did not hear the said appeal within

the mandatory period. Being aggrieved, appellant preferred second appeal before the Commission.

4. The Commission disposed the appeal vide order dated 09/03/2022. It was concluded that the PIO has not shown any concern nor given any response to the application filed by the appellant, such a practice of Mamlatdar of Bardez (PIO) does not conform with provisions and spirit of the Act, hence, PIO is liable for penal action under section 20(1) and 20(2) of the Act. Thereafter, PIO was issued showcause notice seeking his reply as to why action as contemplated under section 20(1) and /or 20(2) of the Act should not be initiated against him.
5. Penalty proceeding were initiated against the PIO, Mamlatdar of Bardez, vide showcause notice dated 15/03/2022. Pursuant to the notice Advocate Satish Saudagar and Advocate Sweta S. Shetgaonkar appeared on behalf of the appellant. Submissions dated 09/05/2022 and 27/09/2022 were filed by Advocate Satish Saudagar on behalf of the appellant. Smt. Yogita Velip, Awal Karkun, Office of the Mamlatdar of Bardez appeared on behalf of the Respondent PIO Mamlatdar of Bardez and filed submission dated 22/04/2022 and 26/07/2022. Later, Shri. Rupesh Kerkar, Awal Karkun, Office of the Mamlatdar of Bardez appeared before the Commission and filed reply on behalf of the PIO on 22/08/2022 and 20/10/2022 and filed submission on 01/12/2022.
6. Smt. Yogita B. Velip, Awal Karkun, Office of the Mamlatdar of Bardez and Shri. Rahul C. Desai, Mamlatdar of Bardez vide a joint submission stated that the office was busy for General Election to Goa Legislative assembly 2022 and it was not possible for him and his staff to attend the appeal proceedings upon receipt of showcause notice PIO came to know the next date of hearing and has taken all necessary efforts to comply with the directions of the Commission.
7. Shri. Rahul C. Dessai, Mamlatdar of Bardez Taluka, vide submission dated 26/07/2022 submitted that vide order No. 31/2008/RB/RTI/164 dated 10/09/2020, the Awal Karkun was appointed as Public Information Officer in the office of the Mamlatdar of Bardez and the Mamlatdar of Bardez was appointed as First Appellate Authority. In view of the above, since the Mamlatdar of Bardez was not Public Information Officer (PIO) at

the relevant time, it is prayed that present penalty proceeding against the Mamlatdar of Bardez be dropped.

8. Shri. Rupesh Kerkar, Awal Karkun, Office of the Mamlatdar of Bardez stated that, the Office of Mamlatdar had received application dated 16/08/2021 from the appellant requesting for information in respect of form No. I and XIV of Survey No. 177/1 of Village Calangute, Bardez Goa. However, vide Order No. 31/2008/RB/RTI/164 dated 10/04/2020, the Talathi was appointed as Public Information Officer in the Office of the Mamlatdar of Bardez to look after all cases related to mutations. Mutation of Survey record was done vide Mutation Case No. 1775, the Revenue Record Form No. I and XIV used to be maintained manually by Talathi shows no mutation records are available in Village Panchayat Calangute. Only hard copy of the form No. I and XIV of survey No. 177/1 and form 9 is available in the office of Talathi and the available information is already furnished to the appellant. Shri. Rupesh Kerkar, Awal Karkun further stated that since Talathi was appointed as PIO to look after all Mutation cases related to survey No. 177/1 at Village Calangute depending on his report further correction is to be done in all cases and all records of the mutation file bearing No. 1775 with respect to the mutation entry in form no. I and XIV of Survey No. 177/1 of village Calangute is in the custody of Talathi.
9. Appellant stated that, PIO has not furnished complete information inspite of the direction from the Commission. The Submissions and information submitted are mischievous and misleading. The Talathi of Calangute has furnished detailed report and information about the mutation case No. 1775 to the Mamlatdar of Bardez, which was inwards in the Office of the Mamlatdar of Bardez on 17/02/2021.
10. Appellant further stated that originally all the Forms No. I and XIV were hand-written. Sometime recently, all the Forms No. I and XIV of the Properties in the State of Goa, were computerized. This conversion could not have been done without direction from the Government and Revenue Authorities. Also the said process had to be done after following due procedure hence, there ought to be a record of this. The same information is sought by the appellant, is denied by the PIO. Some Revenue Officers must have committed error/blunder while preparing computerised Form No. I

and XIV of the property Survey No. 177/1 of Calangute Village, in which original five names have been changed into seven names and due to the said error/blunder, the appellant is affected, hence she is seeking the information.

11. Advocate Satish Saudagar while arguing on behalf of the appellant stated that, PIO has been coming with different excuses to evade the disclosure of the requested information. Mamlatdar of Bardez contends that he is not the PIO. Assuming that the Mamlatdar was not the PIO in the matter of the application dated 16/08/2021, the Mamlatdar was required to follow the procedure prescribed under the Act and transfer the application to the proper PIO-Awal Karkun or Talathi. Also conversion of manual forms were not computerized by Talathi or Awal Karkun, this work ought to have been done by some officer or authority higher in rank.
12. Advocate Satish Saudagar further pointed out that the relevant information was submitted by Talathi to the appellant, and appellant submitted the same to the office of the Mamlatdar. Office of the Mamlatdar was required to correct the error/blunder in computerised Form No. I and XIV of Survey No. 177/1 of Calangute Village, instead, Respondent is claiming that the concerned file is not available. The justification given by the PIO is not acceptable, hence the PIO should be penalized for failing in his duties enshrined in the Act.
13. The Commission has perused the records of the present matter and submissions and arguments of both the sides. After careful perusal it is seen that the appellant vide application dated 16/08/2021 had sought information from Mamlatdar of Bardez. Appellant received no reply, no information within the stipulated period. Ironically, the appeal filed under section 19(1) of the Act before Deputy Collector of Bardez was not heard. Further, respondents did not appear before the Commission during the appeal proceeding, nor filed any submission, and the matter was decided and show cause notice under section 20(1) and 20(2) was issued against respondent PIO.
14. During the penalty proceeding Smt. Yogita B. Velip, Awal Karkun appeared on behalf of the PIO, Mamlatdar of Bardez, and later, upon her transfer Shri. Rupesh Kerkar, Awal Karkun appeared on behalf of the PIO, Mamlatdar of Bardez. It was

contended that PIO could not attend the appeal proceeding since he and his colleagues were busy in the work of Assembly Election. However, the Commission observes that the PIO and the office of the Mamlatdar were required to respond to the application within the stipulated period. Assembly Elections were far away then, and it was very much possible for the PIO to locate and furnish the information.

15. Similarly, contention of the Mamlatdar of Bardez, that he was not the PIO and Awal Karkun and Talathi was the PIO of Office of the Mamlatdar of Bardez appears to be correct, with reference to Order No. 31/2008/RB/RTI/164 dated 10/09/2020, issued by the Collector, North Goa District. However, appellant cannot be blamed for addressing the application to the Mamlatdar of Bardez. In such a situation it was the responsibility of the then Mamlatdar of Bardez to transfer under section 6(3) of the Act, the said application to appropriate PIO. It is clear from the proceeding that the information sought by the appellant ought to have been available with the office of the Talathi of Calangute and/or office of the Mamlatdar of Bardez. Hence, Mamlatdar of Bardez, being the appellate authority of Talathi and Awal Karkun, was required to transfer the application to his subordinates with instruction to furnish the information. Also, both the authorities-Talathi and Awal Karkun-being under his administrative control, Mamlatdar of Bardez could have gathered the information from both the authorities and furnished to the appellant.

16. The Commission notes the contention of the appellant that he had received relevant information from the Talathi and the same was presented before the office of the Mamlatdar of Bardez and office of the Mamlatdar was required to do the corrections in computerized Form No. I and XIV of Survey No. 177/1 of Calangute Village. The said contention of the appellant was not denied by the PIO during the appeal proceeding as well as during the present penalty proceeding. It appears that the required correction was not done by the authority, resultantly, appellant was aggrieved and filed application dated 16/08/2021 seeking the information pertaining to the same issue.

17. It also appears that some personnel from the Office of the Mamlatdar of Bardez had erroneously registered seven names instead of five names in the computerized Form No. I and XIV of

Survey No. 177/1 of Calangute Village while converting the manual form to computerised form. These records undoubtedly must be existing in the custody of the PIO/Mamlatdar of Bardez, hence the said authority was required to do the necessary correction in the said form.

18. Although the Commission has no jurisdiction to direct the authority to do the correction as requested by the appellant, it can be clearly found that even though the correction was not done, the information sought by the appellant should have been furnished by the PIO. Here, PIO has constantly contended that the concerned file is not in his custody and the same is in the custody of Talathi of Village Calangute. However, the Commission cannot lose sight of the fact that the PIO/Mamlatdar of Bardez could have summoned Talathi and furnish the information available with Talathi to the appellant, or he could have transferred the application under section 6(3) of the Act to the Talathi.
19. PIO in the instant matter, did not take any such action, on the contrary he did not appear before the Commission during the proceeding of the second appeal and took the stand during the present penalty proceeding that not he, but Awal Karkun and Talathi is the PIO. Such a conduct of the PIO/Mamlatdar of Bardez at this stage is nothing but shirking responsibility, and the same cannot be endorsed by the Commission.
20. The Commission while disposing Appeal No. 286/2021/SIC vide order dated 09/03/2022 had held that PIO has failed to honour the provisions of the Act, as such he is liable for penal action under section 20 of the Act. Accordingly, show cause notice was issued to the PIO. Shri. Rahul C. Dessai, PIO/Mamlatdar on the date of the order, was required to serve the order alongwith the notice to Shri. Laxmikant B. Kuttikar, the then PIO and produce the acknowledgement before the Commission. However, it is seen from the records that Shri. Rahul C. Dessai did not comply with the direction and himself filed reply before the Commission stating not Mamlatdar, but Awal Karkun is the PIO of Office of the Mamlatdar and Talathi is the PIO in the office of the Mamlatdar of Bardez to look after cases related to mutations. The Commission has already rejected the said contention of Shri. Rahul C. Dessai and has held that Mamlatdar is the PIO in the present matter.

21. Shri. Laxmikant S. Kuttikar, the then PIO did not get opportunity to justify his action since the direction of the Commission was not complied by Shri. Rahul C. Dessai, the former PIO, who took over charge from Shri. Laxmikant B. Kuttikar, the then PIO. This being the case the Commission holds that the onus to furnish the information as directed vide order dated 09/03/2022 and/or justify the action was on Shri. Rahul C. Desai, former PIO and he has clearly failed to comply with the same. Section 19(8)(c) authorizes the Commission to impose any of the penalties provided under this Act, on the erring PIO. Thus, Shri. Rahul C. Dessai, the former PIO/Mamlatdar of Bardez is held guilty of not complying with the direction of the Commission, hence liable for penal action under section 19(8)(c) of the Act.

22. Upon the request of the appellant Shri. Dasharath N. Gawas, present Mamlatdar of Bardez was issued show cause notice dated 20/12/2022 for appearance and reply. Shri. Dasharath N. Gawas, Mamlatdar of Bardez Vide reply dated 23/01/2023 stated that he was not the PIO at the relevant time and requested for withdrawal of the notice. The Commission endorses the stand of Shri. Dasharath N. Gawas and holds that the said show cause notice needs to be withdrawn.

23. In the light of above discussion, the Commission passes the following order:-

- a) Show cause notice issued against Shri. Dasharath N. Gawas, the present Mamlatdar of Bardez stands withdrawn.
- b) Respondent Shri. Rahul C. Dessai the former PIO, Mamlatdar of Bardez shall pay Rs. 10,000 (Rupees Ten Thousand only) as penalty under section 19(8)(c) for not complying with the directions of the Commission.
- c) Aforesaid amount of penalty shall be deducted from the salary of the PIO and the amount shall be credited to the Government treasury.

24. 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