

GOA STATE INFORMATION COMMISSION

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**Penalty No. 04/2022
in
Appeal No. 207/2021/SCIC**

Shri. Arjun Devu Harmalkar,
R/o. H.No. 77, Piquen Poxem,
Tivim, Bardez-Goa. 403502.

.....Appellant

V/S

1. The Public Information Officer,
The Village Panchayat of Tivim,
Tivim, Bardez-Goa. 403502.

2. The First Appellate Authority,
Block Development Officer-I,
Bardez, Mapusa-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 19/04/2022

Decided on: 09/06/2023

ORDER

1. While disposing the appeal bearing No. 207/2021/SCIC vide its Order dated 16/03/2022, this Commission had directed Shri. Dhiraj Govekar, the Public Information Officer (PIO), the Secretary of Village Panchayat Tivim, Bardez-Goa to furnish the information to the Appellant free of cost within a period of 15 days from the date of receipt of the order.
2. The Commission also issued show cause notice to the said PIO, as to why penalty should not be imposed on him in terms of Section 20(1) and/or recommend disciplinary proceeding against him in terms of Section 20(2) of the Act.
3. Pursuant to the notice, Adv. Kanchan Ekoskar appeared on behalf of the PIO on 19/04/2022 and placed on record Affidavit in reply of the PIO dated 18/04/2022.

4. Through the Affidavit in reply dated 18/04/2022, the PIO contended that upon receipt of the RTI application dated 21/01/2021, he responded the same on 20/02/2021 informing the Appellant that information sought by him is not available in the records of the Panchayat.
5. Not satisfied with the reply dated 20/02/2021, the Appellant preferred first appeal before the Block Development Officer, Mapusa-Goa being the First Appellate Authority (FAA). The FAA allowed the first appeal on 08/06/2021 and directed the PIO to carry out thorough search and handover the information to the Appellant within 15 days.
6. The PIO contented that, he was not the designated PIO at the relevant time when the FAA decided the matter and he was not aware about any order passed by the FAA on 08/06/2021, therefore, he cannot be held responsible for non compliance of the order of the FAA.
7. Further according to him, he was also not designated as the PIO when the notice of the second appeal was served to the PIO of Village Panchayat Tivim. Hence, he is not aware of anything about the proceeding of this second appeal.
8. Further according to him, non complying with the order of the FAA dated 08/06/2021 and for non-appearance before the Commission was not intentional or deliberate, but due to bonafide reason that he was not aware of the second appeal proceeding.
9. To substantiate his case, the PIO also produced on record the copy of transfer order dated 03/05/2021 and another transfer order dated 28/10/2021. The records indicate that from 03/05/2021 till 28/10/2021, the PIO was attached to the office of Village Panchayat Assagao, Bardez-Goa and not in the office of Village Panchayat Tivim.

10. On the other hand, Adv. A.R. Kantak produced additional documents to support his case. He produced on record the copy of the construction plan and septic tank plan which were inwards in the office of V.P. Tivim on 20/01/1977 and same were approved by the Village Panchayat Tivim on 29/01/1977. He submitted that by virtue of the approval of the plan in the year 1977 by the V.P. Tivim, it is evident that his house is legally approved by the V.P. Tivim, however, now only to harass the Appellant with ulterior motive, the V.P. Tivim has issued notice to the Appellant for alleged illegal construction of house, and to substantiate his claim he produced on record copy of the notices issued by V.P. Tivim under Section 82 of the Goa Panchayat Raj Act, 1994 dated 10/01/2022 and 22/11/2022. He also strenuously contended that, the V.P. Tivim deliberately destroyed the records pertains to the construction file of the Appellant and prayed that direction may be issued to furnish the information or to file FIR for missing of the records.
11. During the course of hearing on 02/08/2022, Adv. K. Ekoskar appeared and placed on record the memo of documents. Said memo of documents contains the documents with regards to taking over charge of V.P. Tivim by the PIO, including the list of files he has taken over from the then Secretary Mr. Francis Fernandes on 17/01/2018. On scrutinising the said inventory of list of files, there is no mention of any construction file bearing No. 27/77 in the name of Devu Vassu Harmalkar.
12. In the said reply, the PIO also offered for inspection of record during any working day and time with prior intimation to the PIO. However, the Appellant did not show any interest to carry out inspection of records.

13. It is consistent stand of the PIO, that purported information is not available with the records of Village Panchayat Tivim. It is also to be noted that the information sought with regards to the construction plan and file No. 27/77 pertains to the year 1977, which was sought after the span of about 45 years. It is quite probable that the records may not be available with the records of Village Panchayat Tivim.

The role of the PIO is information provider and he can only facilitate in providing the information which is available in his records. The PIO cannot either confirm or deny the perception of the Appellant. If a document is not available on the records the only information that can be replied is that no such document is available.

14. The High Court of Patna in the case **Shekhar Chandra Verma v/s State Information Commissioner (LPA 1270/2009)** has held that:-

"10. In our view, the RTI Act contemplates furnishing of information which is available on records, but it does not go so far as to require an authority to first carry out an enquiry and thereby 'create' information, which appears to be what the information seeker had required of the appellant."

15. I have perused the order of the FAA dated 08/06/2021, particularly the operative part of the said order reads as under:-

"Appellant present, Respondent absent. Since the reply filed by PIO to the RTI application dated 21/01/2021, I am of the opinion that thorough search is required to dig out the information. Therefore, I hereby order the respondent to do the thorough search and handover the information if available within fifteen days."

From the plain reading of the above, it indicates that the FAA was also not fully convinced about availability of information and therefore directed the PIO to carry out thorough search and furnish the information if available.

16. In fact, in a penalty proceeding, the Appellant has a very limited role to receive the information.

The High Court of Delhi in case **Ankur Mutreja v/s Delhi University (LPA 764/2011)** has held that:-

"10. While in deciding the appeal, the CIC is concerned with the merits of the claim to information, in penalty proceedings the CIC is concerned with the compliance by the Information Officers of the provisions of the Act. A discretion has been vested in this regard with the CIC. The Act does not provide for the CIC to hear the complainant or the appellant in the penalty proceedings, though there is no bar also there against if the CIC so desires. However, the complainant cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring Information Officer. There is no provision in the Act for payment of penalty or any part thereof if imposed, to the complainant. Regulation 21 of the Central Information Commission (Management) Regulations, 2007 though provides for the CIC awarding such costs or compensation as it may deem fit but does not provide for such compensation to be paid out of the penalty if any imposed. The appellant cannot thus urge that it has a right to participate in the penalty proceedings for the said reason either.

11. The penalty proceedings are akin to contempt proceedings, the settled position with respect thereto is that after bringing the facts to the notice of the Court, it becomes a matter between the Court and the contemnor and the informant or the relator who has brought the factum of contempt having been committed to the notice of the Court does not become a complainant or petitioner in the contempt proceedings. His duty ends with the facts being placed before the Court though the Court may in appropriate cases seek his assistance."

17. Having gone through the entire material on record, it indicates that the matter is purely a grievance issue and can be addressed through the grievance addressal mechanism by taking up the matter with concerned higher authorities or to approach an appropriate court of law for legal remedy. The authority of this Commission is simply to provide the information. It is not a forum for seeking redressal of grievance, there is no provisions under the Act to redress the grievance.
18. I have perused the content of Affidavit in reply dated 18/04/2022, the PIO categorically submitted on oath that, the purported information is not available with the records of the Panchayat. Since the information is not available in the records, the Commission cannot issue any direction to the PIO to furnish non-existing information. In case at any time the content of the said Affidavit are found false, the person swearing it, would be liable for action for perjury.
19. Since, Shri. Dhiraj J. Govekar was not designated as the PIO at the relevant time, he cannot be held responsible for non-compliance of the order of the FAA or not appearing before the Commission in the second appeal.

20. In the light of above facts and circumstances, the show cause notice dated 23/03/2022 issued in the present penalty proceeding against the PIO, Shri. Dhiraj Govekar is dropped.

- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner