

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 30/2023

In

Appeal No.58/2023/SIC

Luel Fernandes,
136, Cotta, Chandor,
Salcete-Goa 403714.

-----Appellant

v/s

Public Information Officer,
The Mamlatdar,
Mathany Saldanha Building,
Fatorda, Margao Salcete-Goa.

-----Respondent

Relevant dates emerging from penalty proceeding:

| | |
|--|--------------|
| Order passed in Appeal No. 58/2023/SIC | : 12/06/2023 |
| Show cause notice issued to PIO | : 30/06/2023 |
| Beginning of penalty proceeding | : 10/07/2023 |
| Decided on | : 30/11/2023 |

ORDER

1. The penalty proceeding has been initiated against Shri. Laxmikant Dessai, Respondent Public Information Officer (PIO), under Sub-Section (1) and (2) of Section 20 of the Right to Information Act, 2005 (herein referred to as the 'Act') for contravention of Section 7 (1) of the Act and non compliance of the directions of the FAA and the Commission.
2. The complete details of this case are discussed in the order dated 12/06/2023 of the Commission. However, the facts are reiterated in brief in order to steer through in its proper perspective.
3. The appellant had sought certain information from PIO. He did not receive complete and correct information inspite of the direction by the First Appellant Authority (FAA). 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 12/06/2023. It was concluded that the PIO is guilty of contravention of Section 7 (1) of the Act, non compliance of the direction of the FAA and not honouring the direction of the Commission, and that the said conduct deserves penal action. The

Commission held that the PIO, Mamlatdar of Salcete has miserably failed to furnish the information to the appellant. It was observed that the appellant had sought information on two cases, whereas the PIO furnished wrong information on first case and no information on second case. Further, it was held that mere statement saying the information is not available is not sufficient, he is required substantiate such statement with appropriate evidence on record.

5. This being the case, the PIO was issued show cause notice seeking his reply as to why penalty as provided in Section 20 (1) of the Act should not be imposed against him.
6. Penalty proceeding was initiated against Shri. Laxmikant R. Dessai, PIO and Mamlatdar of Salcete Taluka. PIO appeared in person and undertook to comply with the order passed by the Commission while disposing Appeal No. 58/2023/SIC. Subsequently, Shri. Rohan Paes, present PIO and Shri. Viswas Satardekar, APIO appeared on behalf of the then PIO Shri. Laxmikant R. Dessai and on 22/11/2023 filed reply. Appellant while appearing in person stated that correct and complete information is not received by him, thus, he prays for imposition of penalty against the PIO.
7. PIO stated that, the appellant had sought information pertaining to proceeding in case no. TNC/JM-II/35/93 and TNC/PURCHASE/jm ii/cav/652/1998, and the PIO had furnished copies of the entire proceeding of case no. TNC/JM-II/35/93, within 30 days. Yet, the appellant is falsely accusing the PIO of giving wrong information. It was the duty of the appellant to check the information given before doing the payment and collecting it.

PIO further stated that, records pertaining to case no. TNC/purchase/jm ii/cav/652/1998 were thoroughly checked in the inventory list, however the same is not available, thus cannot be furnished.

8. The Commission has perused records of the present penalty proceeding as well as records of Appeal No. 58/2023/SIC decided on 12/06/2023. Upon careful perusal it is seen that, the appellant had requested for information pertaining to two cases as mentioned at Para 4. PIO furnished some documents with respect to the first case, however it was already held that the said documents does not pertain to the information sought by the appellant. Also, the PIO has not furnished any information pertaining to the second case, inspite of directions issued by the appellate authorities.

9. Thus, the Commission finds that, whatever information furnished was incorrect information, meaning no correct and complete information has been furnished by the PIO. FAA while directing the PIO to furnish the information within 15 days, had observed that the PIO is not serious about his duties while performing as PIO. Also, the Commission had directed the PIO to furnish the information within 15 days and had noted that the PIO has taken no action and made no efforts to search the records and furnish the information.
10. PIO during the present penalty proceeding had undertaken to present the copy of inventory, in order to prove that the requested information is not available. However, no any copy of inventory was filed before the Commission even after opportunity as requested by the PIO was granted.
11. This flow of events shows that the PIO has knowingly avoided furnishing of the information, refused to comply with the direction of the appellate authorities. Meaning, the PIO has shown scant respect, rather no respect to the Act and the authorities constituted under the Act, such as the FAA and the Commission. Such an intransigent conduct on the part of the PIO is totally unacceptable vis-à-vis intent of the Act.
12. The Hon'ble Gujarat High Court in Special Civil Application No. 8376 of 2010 in case of Urmish M. Patel v/s. State of Gujarat & 5 has held that Penalty can be imposed if First Appellant Authority order is not complied.

"8. Nevertheless, I cannot lose sight of the fact that the petitioner did not supply information, even after the order of the appellate authority, directing him to do so. Whatever be the nature of the appellate order the petitioner was duty bound to implement the same, whether it was a speaking order or whether the appellate authority was passing the same after following the procedure or whether there was any legal flaw in such an order, he ought to have complied with the same promptly and without hesitation. In that context, the petitioner failed to discharge his duty."

13. 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."

14. 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 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."

15. In the background of the findings of the Commission and subscribing to the ratio laid down by the Hon'ble High Courts in the above mentioned judgments, PIO in the present matter is held guilty of contravention of Section 7 (1) of the Act, for not complying with the direction of the FAA and the Commission. 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 against the PIO. Hence, the Commission passes the following order:-

- a) Shri. Laxmikant Dessai, PIO, Mamlatdar of Salcete, Margao-Salcete shall pay Rs. 12,000/- (Rupees Twelve Thousand only) as penalty for contravention of Section 7 (1) of the Act and for not complying with the order of the FAA and the Commission in the specified time frame.
- b) Aforesaid amount of penalty shall be deducted from the salary of PIO in three installments of equal amount of Rs. 4,000/- each beginning from the salary of the month of January 2024 to March 2024, and the amount shall be credited to the Government treasury.

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