

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 32/2023

In

Appeal No.108/2023/SIC

Nihar Milind Barve,
R/o. 3/S-3, Kamat Complex 1, Tonca,
Caranzalem, Tiswadi-Goa 403002.

-----Appellant

v/s

1. First Appellate Authority,
Corporation of the City of Panaji,
Panaji-Goa 403001.

2. The Public Information Officer,
Corporation of the City of Panaji,
Panaji-Goa 403001.

-----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 108/2023/SIC	: 17/07/2023
Show cause notice issued to PIO	: 31/07/2023
Beginning of penalty proceeding	: 21/08/2023
Decided on	: 30/10/2023

ORDER

1. The penalty proceeding against Opponent Public Information Officer (PIO), Shri. Siddhesh B. Naik, Accounts/ Taxation Officer of the Corporation of the City of Panaji has been initiated vide Show Cause Notice dated 31/07/2023, issued under Section 20 (1) of the Right to Information Act, 2005 (hereinafter referred to as the “Act”), for contravention of Section 7 (1) of the Act.
2. The Commission has discussed complete details of this case in the order dated 17/07/2023. Nevertheless, the facts are reiterated in brief in order to appraise the matter in its proper perspective.
3. The appellant had sought information on five points from the PIO. Appellant received no reply within the stipulated period, hence, filed first appeal before the First Appellate Authority (FAA). The said appeal was disposed with direction to the PIO to furnish the information. Subsequently, PIO furnished the information. However, the appellant filed second appeal before the Commission contending that the PIO had furnished only partial information.

4. The Commission after due proceeding, disposed the appeal vide order dated 17/07/2023. It was held that the PIO is guilty of not responding to the applicant within the stipulated period of 30 days, as required under Section 7 (1) of the Act. The Commission observed that the conduct of the PIO has caused harassment and financial loss to the appellant and held the PIO liable for penal action under Section 20 (1) of the Act. Accordingly, the PIO was issued show cause notice with direction to submit written reply stating as to why penalty under Section 20 (1) should not be imposed against him.
5. The penalty proceeding was initiated against Shri. Siddhesh B. Naik, Corporation of the City of Panaji. Shri. Siddhesh B. Naik appeared in person and filed submission dated 30/08/2023, pertaining to compliance of order dated 17/07/2023 passed by the Commission and on 06/09/2023 filed reply to the show cause notice. Appellant appeared in person pressing for penal action against the PIO.
6. PIO stated that, upon receipt of the application he had marked the same to all municipal inspectors of the Corporation in order to provide the information. In the meanwhile, appellant filed first appeal and requisite information was furnished to the appellant on the day of the disposal of the first appeal. The delay caused in furnishing the information was not intentional, the process of collecting the information from municipal inspectors was time consuming. Also that, the PIO had furnished the information free of cost and the PIO assures the Commission hereafter to be more careful and punctual while dealing with applications received under the Act.
7. Upon perusal of the records of the present penalty proceeding and the appeal (Appeal No. 108/2023/SIC) proceeding, it is seen that, though after the stipulated period, PIO had furnished the information as available, to the appellant. The appellant had received the same and had not raised any grievance before the Commission with respect to the information. The only grievance appellant raised was pertaining to the delay. Hence, the Commission finds that the PIO has explained the reasons behind the delay. Also, the PIO has apologized for the delay and has undertaken hereafter to be more careful and respectful towards the provisions of the Act.
8. The Commission finds the explanation and the undertaking given by the PIO, satisfactory. Although Section 20 (1) of the Act provides for penalty on the PIO, the same is a discretionary measure. The Commission in the present matter, in the background of the explanation and undertaking given by the PIO, invokes the said

discretionary power and concludes that there is no need of penal action against the PIO.

9. Also, Hon'ble High Court of Bombay at Goa in A. A. Parulekar v/s. Goa State Information Commission and Other, has held that penalty may be imposed on PIO only if it is established that the failure of PIO was either intentional or deliberate. Further, Hon'ble High Court of Bombay at Goa in Public Authority and others v/s. Shri. Yeshwant Tolio Sawant, has held that marginal delay in furnishing the information needs to be accepted if the explanation for the delay given by the PIO satisfies the authority.
10. Hence, subscribing to the ratio laid down by the Hon'ble High Court and with respect to the findings of the Commission, it is held that the present case does not warrant levy of penalty under Section 20 (1) of the Act against the PIO.
11. In the light of above discussion, the show cause notice issued against Siddesh B. Naik, PIO stands withdrawn and the penalty proceeding is dropped. The matter is disposed and the 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