

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 48/2023

In

Appeal No. 182/2023/SIC

Shri. Nazareth Baretto,
H.No. 126, Borda,
Margao, Salcete-Goa.

-----Appellant

v/s

The Public Information Officer,
Office of the Administrator of Comunidades
South Zone, Margao, Salcete-Goa.

-----Respondent

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 182/2023/SIC	: 28/08/2023
Show cause notice issued to PIO	: 08/09/2023
Beginning of penalty proceeding	: 25/09/2023
Decided on	: 21/12/2023

ORDER

1. The penalty proceeding has been initiated against Shri. Joao B. Fernandes, Respondent Public Information Officer (PIO) and the then Administrator of Comunidades, South Zone, Margao, under Sub-Section (1) and (2) of Section 20 of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') for contravention of Section 7 (1) of the Act and non compliance of directions of the FAA and the Commission.
2. The complete details of this case are discussed in the order dated 28/08/2023 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 28/08/2023. 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, Administrator of Comunidades, South Zone, Margao has not acted to ensure compliance of the direction of the FAA. Also, that the PIO neither attended the appeal proceeding, nor filed any say justifying his action of not furnishing complete information. The Commission observed that the PIO has acted completely against the provisions and the spirit of the Act and the said conduct deserves to be punished under Section 20 of the Act.

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. Joao B. Fernandes, PIO and the then Administrator of Comunidades of South. PIO appeared in person and filed reply dated 16/10/2023 and additional reply dated 05/12/2023. Appellant attended the proceeding and filed rejoinder dated 30/10/2023 to the reply of the PIO.
7. PIO stated that, the information sought by the appellant was furnished by him within the stipulated period. Later, First Appellate Authority passed an order directing the PIO to provide the information. PIO further contended that, his office received the said order on 22/02/2023 and he was not in a position to comply with the order since he was transferred and relieved on the same day.
8. PIO submitted that, as per the directions issued by the Commission he facilitated inspection of relevant records in the office of the Administrator of Comunidades, South zone, yet appellant could not trace the desired information. Further, his office had issued memorandum to the Escrivao/ Clerk /Registrar (Deemed PIO) to provide the requested information. Accordingly, the appellant had remained present in the office of Comunidades of Davorlim and the appellant as well as the Escrivao/ Clerk /Registrar had acknowledged that the requested information is not available. Thus, he requests for withdrawal of the show cause notice issued against him.
9. Appellant stated that, the PIO had initially failed to furnish complete information within the stipulated period. Therefore, he was duty bound to comply with the direction issued by the FAA. Appellant further submitted that, the PIO has not bothered to furnish complete information and the said non-compliance has occurred on account of non- co-operation of the PIO. Appellant stated that, upon the

direction by the Commission during the present penalty proceeding he visited the office of the Administrator of Comunidades of South Zone, however, Shri. Joao B. Fernandes, PIO provided irrelevant files having no connection with the information sought by him.

10. Appellant stated that, the said action of the PIO has compelled him to appear before different authorities, which has caused mental and financial stress to him without getting the desired information. Hence, he prays for imposition of penalty against the PIO.
11. The Commission has perused records of the present penalty proceeding as well Appeal No. 182/2023/SIC, decided on 28/08/2023. Upon careful perusal it is seen that the appellant had sought information on 22 points and in response he was furnished some information by the PIO vide reply dated 31/01/2023. However, the said reply was not point-wise and the PIO has not established anywhere during the proceeding that he had furnished complete information. Further, appellant was granted relief by the FAA with direction to the PIO to furnish the information. The said order was passed on 20/02/2023 and Shri. Joao B. Fernandes, PIO was present before the FAA. Though he was transferred and relieved on 22/02/2023 he was mandated to comply with the order and furnish the information. If not, he could have apprised the new PIO regarding compliance of the order. However, Shri. Joao B. Fernandes failed to take any such action.
12. Further, during the present penalty proceeding the respondent PIO undertook before the Commission to provide inspection. The appellant contends that irrelevant files were provided by the PIO for inspection, resultantly, he could not trace the correct information. The said contention was not challenged by the PIO during the present proceeding. Thus, the Commission holds the PIO guilty of deliberately evading disclosure of the information.
13. PIO during the penalty proceeding stated that the requested information was part of records of Comunidade of Davorlim and the appellant and the Escrivao/ Clerk /Registrar of the Comunidade of Davorlim has acknowledged that the requested information is not available in the records of Comunidades of Davorlim. Here, the appellant has denied the said contention and the Commission notes that the PIO has not produced any documents to substantiate his contention. Copy of memorandum dated 29/08/2022 produced by the PIO pertains to different matter and has no relation with the present matter.

14. Going by the stand of the PIO, if the information was not available in the records of Comunidade of Davorlim, then the PIO was required to take appropriate action upon knowing the same, such as informing higher authority or directing Escrivao/ Clerk /Registrar of Comunidade of Davorlim to undertake search or filing police complaint regarding non availability of records. No any such action was taken by the PIO. Being the custodian of records the PIO is held responsible for safety of every document in his custody and is solely responsible to furnish such documents sought by a citizen.
15. With these findings the Commission holds the PIO guilty of not complying with Section 7 (1) of the Act. 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.
16. 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."

17. 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."

18. 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."

19. 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. Joao B. Fernandes, the then PIO, Administrator of Comunidades of South Zone, Margao shall pay Rs. 6,000/- (Rupees Six Thousand only) as penalty for contravention of Section 7 (1) of the Act and for not complying with 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 two installments of equal amount of Rs. 3,000/- each beginning from the salary of the month of January 2024 to February 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