

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No.07/2023

In

Appeal No. 192/2022/SIC

Nixon L. Furtado,
H.No. 51,
Copelwaddo, Sernabatim,
Salcete-Goa 403708.

-----Appellant

v/s

1. The Public Information Officer,
Office of the Village Panchayat Colva,
Colva, Salcete-Goa.

2. The First Appellate Authority,
Office of the Block Development Officer Salcete -I,
Margao-Salcete-Goa 403601.

-----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 192/2022/SIC	: 30/01/2023
Show cause notice issued to PIO	: 10/02/2023
Beginning of penalty proceeding	: 28/02/2023
Decided on	: 26/06/2023

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 (hereinafter 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 30/01/2023 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 the PIO. He did not receive complete information inspite of the direction of the First Appellant Authority (FAA). Being aggrieved, appellant appeared before the Commission by way of second appeal, praying for the remaining information and penal action against the PIO.

4. The Commission after hearing both the sides disposed the appeal vide order dated 30/01/2023. It was concluded that the PIO had failed to furnish the information and take appropriate action on his contention of files being, not traceable. The Commission further concluded that, the casual and irresponsible approach of the PIO has resulted into non compliance of Section 7 (1) of the Act and for this PIO was issued show cause notice for penal action under Section 20 (1) and / or 20 (2) of the Act seeking his reply as to why penalty as provided under Section 20 (1) and / or 20 (2) of the Act should not be imposed against him.
5. Penalty proceeding was initiated against Shri. Amol Vaman Tilve, PIO. Pursuant to the show cause notice Shri. Amol Vaman Tilve, PIO appeared in person and filed reply on 28/02/2023, reply on affidavit dated 04/04/2023 and additional affidavit dated 03/05/2023. Shri. Nevil B. Furtado appeared on behalf of the appellant and filed submission dated 25/05/2023.
6. Appellant stated that, the PIO has denied the information with malafide intention inspite of the directions by the Commission to furnish the same. That, information sought pertained to construction licence issued by the Village Panchayat Colva to Shri. Joaquim Xavier D'Cruz, and the file maintained by the Panchayat in the name of Shri. Joaquim Xavier D'Cruz must have all documents sought by the appellant. PIO needs to be taken to task if the records/ files are not maintained properly and for shielding the violators.
7. Appellant further submitted that he prays for penal and disciplinary action against the then PIO for not furnishing the information, the present PIO for failing to comply with the direction of the Commission and the First Appellate Authority (FAA) for ignoring the direction of the Commission to complete the enquiry and submit the findings to the Commission within 120 days.
8. PIO vide reply on affidavit stated that, the appellant vide application dated 22/03/2022 had sought information on seven points and vide reply dated 12/05/2022 he had furnished information on first point which was available in office records. Information on point no. 6 does not exist and information with respect to point no. 2, 3, 4, 5 and 7 is not traceable in the records. He had requested the appellant to conduct inspection of relevant records, but appellant never approached him for inspection.

9. Later, vide additional affidavit dated 03/05/2023, PIO stated that, the occupancy certificate granted by the Village Panchayat Colva is not there in the records as no occupancy certificate was issued to Shri. Joaquim Xavier D'Cruz by the Village Panchayat. Also, with respect to copy of the House tax assessment done by the Panchayat, no name of Joaquim Xavier D'Cruz is reflecting in House tax assessment register, since no House number was issued by the Village Panchayat Colva in the name of Joaquim Xavier D'Cruz. Similarly, with respect to resolution taken by the Village Panchayat Colva regarding issuing House number, such information does not exist in the records as there is no House number issued to Joaquim Xavier D'Cruz by the said Panchayat.
10. The Commission has perused the records of the present penalty proceeding as well as records of Appeal No. 192/2022/SIC, decided on 30/01/2023. Upon perusal it is seen that, the appellant had sought information on seven points, the said application was not responded by the PIO within the stipulated period of 30 days. Later, during the proceeding of the first appeal PIO furnished information on first point and stated that information on point no. 2 to 7 is not available. Further, FAA directed PIO to furnish the information on point no. 2 to 7, however, said direction was not complied by the PIO.
11. During the second appeal proceeding PIO vide reply on affidavit had stated that information on point no. 1 was furnished, information on point no. 6 does not exist and information on point no. 2, 3, 4, 5 and 7 is not traceable in the records of Village Panchayat Colva. Relying on the said reply on affidavit, the Commission, while disposing the second appeal concluded that the information on point no. 2 to 5 and 7 existed in the records of the Panchayat at some point of time, thus asked PIO to search and furnish the said information and directed the FAA, Block Development Officer-I, Salcete, to undertake appropriate inquiry into the issue of non traceability of the said information.
12. Shri. Amol Vaman Tilve, the then PIO, who was issued show cause notice for contravention of Section 7 (1) of the Act, during the present penalty proceeding vide two affidavits stated that he alongwith the staff of the Panchayat searched the records thoroughly and found that information on point no. 2, 4, 5 and 7 is not traceable. PIO further stated that, information sought under point no. 3 i.e. approved plan, approved by the Village Panchayat Colva is not traceable, however, it was found that the said name (Joaquim Xavier D'Cruz) was mentioned in construction licence register of 1992-93

and the same copy has been furnished to the appellant. Similarly, with respect to information on point no. 6, on the House tax register no name of Joaquim Xavier D'Cruz is reflecting, thus the said information does not exist. Further, no occupancy certificate and no House number was issued to Shri. Joaquim Xavier D'Cruz by Village Panchayat Colva, hence the remaining information does not exist and whatever is not accessible in the records cannot be furnished to the appellant.

13. Since the above mentioned statements are made by the PIO by signing an affidavit, the Commission accepts the same and finds that the PIO has furnished the information as available. Going by the said affidavit the Commission can not expect the PIO to furnish a non-existing information or to create any such information. Needless to say that, in case at any time the statement in the said affidavit are found false, the person swearing it would be liable for action for perjury.
14. In the background of the above mentioned facts and findings the Commission concludes that, with respect to the affidavits dated 04/04/2023 and 03/05/2023, the PIO has furnished the available information and that he cannot be directed to furnish the non existing information. It is true that the information as available was furnished after the expiry of the stipulated period. Nevertheless, subscribing to ratio laid down by the Hon'ble High Court of Bombay at Goa in A. A. Parulekar v/s Goa State Information Commission and in Public Authority and Other v/s Shri. Yeshwant Tolio Sawant, the Commission observes that since the available information has been furnished, there is no need to impose penalty under Section 20 of the Act against the PIO. Thus, the show cause notice issued under Section 20 (1) and 20 (2) of the Act against Shri. Amol Vaman Tilve, the then PIO is required to be withdrawn.
15. In the light of above discussion, the show cause notice issued under Section 20 (1) and 20 (2) against Shri. Amol Vaman Tilve, the then 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