

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No.12/2023

In

Appeal No. 62/2022/SIC

Jawaharlal T. Shetye,
H. No. 35/A, Ward No. 11,
Khorlim, Mapusa Goa 403507.

-----Appellant

v/s

1. The Public Information Officer,
Mapusa Municipal Council,
Mapusa, Bardez Goa 403507.

2. The First Appellate Authority,
The Chief Officer,
Mapusa Municipal Council,
Mapusa, Bardez Goa 403507.

-----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 62/2022/SIC	: 27/02/2023
Show cause notice issued to PIO	: 13/03/2023
Beginning of penalty proceeding	: 03/04/2023
Decided on	: 22/05/2023

ORDER

1. The penalty proceeding has been initiated against Respondent Public Information Officer (PIO), under Sub-Section (1) 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 order of the appellate authority.
2. The complete details of this case are discussed in the order dated 27/02/2023, of the Commission. However, the facts are reiterated in brief in order to steer through in its proper perspective.
3. The brief facts of this appeal, as contended by the appellant are that he had sought certain information from the PIO, upon not getting any reply within the stipulated period, he filed appeal before the FAA. The said appeal was not heard by the FAA. Being aggrieved, appellant preferred second appeal before the Commission.
4. The Commission, after hearing both the sides disposed the appeal vide order dated 27/02/2023. It was concluded that the PIO is guilty

of contravention of Section 7 (1) of the Act and not honouring the direction of the Commission, and that the said conduct deserves penal action. The Commission found that the PIO has no obligation under the Act and has no respect towards the authorities designated under the Act. The Commission also found that the said conduct is an obstacle for transparency and accountability and not in consonance with the Act, thus, this lapse on the part of the PIO is punishable under Sub Section (1) of Section 20 of the Act. This being the case, the PIO was issued show cause notice as to why penalty as provided in Section 20 (1) of the Act, should not be imposed against him.

5. Penalty proceeding was initiated against Shri. Prashant Narvekar, former PIO and Shri. Vyankatesh Sawant, the then PIO. Shri. Prashant Narvekar, former PIO appeared in person alongwith Shri. Rajendra Bagkar, the present PIO and filed reply dated 18/04/2023. Shri. Rajendra Bagkar filed reply dated 18/04/2023. Shri. Vyankatesh Sawant, the then PIO, filed submission in the registry on 03/04/2023 seeking time to file reply, time was granted, however, he neither remained present, nor filed reply.
6. Shri. Prashant Narvekar, former PIO stated that, Shri. Vyankatesh Sawant was the PIO on the date of application i.e. 19/10/2021. He took charge as PIO on 22/12/2021. After taking over he made efforts to trace and furnish the information sought by the appellant, however, realised that the said information pertains to Administration Section, hence, not available in the Technical Section. Shri. Narvekar further stated that, due to his efforts the said information was traced and was furnished by the present PIO to the appellant.
7. Shri. Rajendra Bagkar, the present PIO stated that, information sought by the appellant has been furnished vide letter dated 11/04/2023. Now that, all the requested information has been furnished he requests for withdrawal of the showcause notice.
8. Shri. Vyankatesh Sawant, the then PIO stated that, he was the PIO on the date of RTI application dated 19/10/2021. That, due to ongoing G-20 Summit he is not able to attend hearing on 03/04/2023 and requested to postpone the matter to the next date.
9. The Commission has perused the records of the present penalty proceeding as well as the relevant appeal (Appeal No. 62/2022/SIC decided vide order dated 27/02/2023). It is noted that, the appellant was not furnished any information, no reply was filed by the PIO within the stipulated period. Later, FAA did not hear the first appeal.

Being aggrieved, appellant had filed second appeal before the Commission. After hearing both side the Commission had held that PIOs Shri. Vyankatesh Sawant and Shri. Prashant Narvekar have failed to furnish the required information. The Commission further held that such a careless attitude of these PIOs compelled the appellant to appear before the Commission seeking information, such an adamant and non-cooperative conduct of the PIOs needs to be condemned and punished. The Commission therefore, concluded that Shri. Vyankatesh Sawant is guilty of contravention of Section 7 (1) of the Act and Shri. Prashant Narvekar guilty of not honouring the direction of the Commission. Thereafter Shri. Vyankatesh Sawant and Shri. Prashant Narvekar were issued show cause notice as to why penalty as provided in Section 20 (1) of the Act should not be imposed against them.

10. Upon perusal of reply of Shri. Prashant Narvekar, former PIO and Shri. Rajendra Bagkar, present PIO the Commission observes that, the information has been furnished by the present PIO with the help of former PIO. However, Shri. Vyankatesh Sawant, the then PIO who was primarily responsible for furnishing information in compliance with Section 7 (1) of the Act, had not even bothered to reply to the appellant within the stipulated period. Later, during the present penalty proceeding it is seen that Shri. Vyankatesh Sawant had requested for the next date, accordingly opportunity was given to him. However, Shri. Vyankatesh Sawant, the then PIO failed to appear before the Commission, nor filed any reply to justify his action.
11. Section 7 (1) of the Act mandates PIO to furnish the information within 30 days from the receipt of the application or reject the request for any of the reason specified in Section 8 and 9. PIO in the present matter did not even respond, hence, the said inaction under Section 7(2) of the Act amounts to deemed refusal of the request. PIO has neither given any reason for such denial, nor has justified his action as required under Section 19 (5) of the Act. Instead of furnishing the information, which is preliminary responsibility under the Act, PIO's conduct during the appeal as well as present penalty proceeding clearly indicated that he has no intention to comply with the directions issued by the authorities designated under the Act, including the Commission.
12. 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.”

13. 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.”

14. The Honorable High Court of Bombay at Goa Bench in Writ Petition no. 304/2011, Johnson B. Fernandes V/s Goa State Information Commission has dismissed the appeal of the PIO by upholding the order of the Commission, imposing penalty for his failure to supply information within the stipulated period. Also, Hon’ble High Court of Himachal Pradesh, in Letters Patent Appeal No. 4009 of 2013, Sanjay Bhagwati v/s. Ved Prakash and others, has held that if a person refuses to act, then his intention is nothing but malafide.

15. In the background of the findings of the Commission and subscribing to the ratio laid down by the Hon’ble High Courts in above mentioned judgments, PIO in the present matter is held guilty for not furnishing the information and not complying with the directions of the Commission. The onus of furnishing information was completely on Shri. Vyankatesh Sawant, the then PIO. From the conduct of the then PIO, it is clearly inferred that he has no concern to his obligations under the Act and has no respect towards the higher authorities, such a conduct is totally unacceptable vis-a-vis the intent of the Act and 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.

16. Thus, the Commission passes the following order:-

- a. Shri. Vyankatesh Sawant, the then PIO, Mapusa Municipal Council, shall pay Rs. 10,000/- (Rupees Ten Thousand only) as penalty for contravention of Section 7 (1) of the Act and for not complying with the direction of the Commission.
- b. Aforesaid amount of penalty shall be deducted from the salary of PIO in two installments of equal amount of Rs. 5,000/- each beginning from the salary of the month of June 2023 to July 2023, and the amount shall be credited to the Government treasury.

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