GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No.27/2022
In
Appeal No. 122/2022/SIC

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

    v/s

1. Public Information Officer,
Administrator of Communidades of North Zone,
Mapusa, Bardez-Goa.

2. The First Appellate Authority,
The Additional Collector -III,
Office at Government Complex,
Morod, Mapusa, Bardez-Goa 403507.   ------Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 122/2022/SIC	: 11/08/2022
Show cause notice issued to PIO	: 17/08/2022
Beginning of penalty proceeding	: 15/09/2022
Decided on	: 16/01/2023

O R D E R

1. The penalty proceeding against Respondent Public Information Officer (PIO), Shri. Sagar Gaude, Administrator of Communidades of North Zone, Mapusa Goa has been initiated vide show cause notice dated 17/08/2022, issued under Section 20 (1) and 20 (2) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') for not furnishing the information to the appellant.

2. The Commission has discussed complete details of this case in the order dated 11/08/2022. Nevertheless, the facts are reiterated in brief in order to appraise the matter in its proper perspective.

3. The appellant, vide application dated 06/01/2022 had sought certain information from PIO. Upon not receiving any reply within the stipulated period, he filed appeal before the First Appellate Authority (FAA). The FAA directed PIO to furnish the information, however, PIO did not comply with the order, hence, appellant filed second appeal before the Commission.

4. The Commission, after due proceeding disposed the appeal vide order dated 11/08/2022. It was held that the PIO is guilty of not furnishing the information and not complying the order of FAA and not adhering to the direction of the Commission. The Commission vide the said order observed that such a conduct of PIO is not in consonance with the Act and directed PIO to show cause as to why action as contemplated under Section 20 (1) and 20 (2) of the Act should not be initiated against him.

5. The penalty proceeding was initiated against Shri. Sagar Gaude, PIO. Pursuant to the notice, appellant appeared in person. Advocate Sanjiv S. Sawant appeared on behalf of the PIO and undertook to furnish the information to the appellant and requested for withdrawal of show cause notice. Advocate Sanjiv S. Sawant, on behalf of PIO filed reply on 15/09/2022 and submission on 07/12/2022.

6. PIO stated that, during the stipulated period of the application, he was appointed as Electoral Roll Officer/ Returning Officer for Bicholim Assembly constituency and he remained busy with the election work due to which he could not furnish the information and could not attend the proceeding of the second appeal. The action of PIO not to furnish information was not intentional or deliberate to harass the appellant. Later, after the post election reporting work completed, he had prepared a reply alongwith information to be furnished to the appellant. In the meanwhile, his transfer order was issued by the Personnel Department and currently he is holding charge as the Deputy Commissioner of Commercial Taxes.

7. Later, on 07/12/2022 Advocate Sanjiv S. Sawant, appearing for PIO, filed a submission stating that the PIO has furnished the information by Registered A.D. Post, the same is received by the appellant on 23/11/2022 and the copy of acknowledgement is produced before the Commission. With this, Advocate Sanjiv S. Sawant requested for withdrawal of show cause notice and dropping of the penalty proceeding.

8. Upon perusal, it is seen that, PIO had not furnished the information within the stipulated period and was held guilty of contravention of Section 7 (1) of the Act. However, it is disclosed from the reply of the PIO that he was appointed as Electoral Roll Officer/ Returning Officer for Bicholim Assembly Constituency. Hence, he was stationed at Bicholim and matters pertaining to his duty as Administrator of Coummunidades of North Zone, Mapusa could not be attended by him.

9. During the proceeding of the present penalty matter, PIO as undertaken, has furnished the information by Registered A.D. Post to the appellant. On the other hand, appellant after receiving the information has not raised any objection to the information furnished by the PIO.

10. This being the case, the Commission finds the explanation given by the PIO for delay in furnishing the information, satisfactory. By furnishing the information, PIO has shown that there was no dishonest intention behind non furnishing of the information within the stipulated period. Thus, no malafide need to be attributed to the intention and the action of the PIO.

11. Hon'ble High Court of Bombay at Goa, in writ Petition No. 205/2007, Shri. A. A. Parulekar V/s. Goa State Information Commission, has held that:-

    "*The order of penalty for failure is akin to action under Criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate*".

12. Subscribing to the ratio laid down by the Hon'ble High Court, as mentioned above, and considering the findings of the Commission in the matter, the present case does not warrant levy of penalty under Section 20 of the Act, on Shri. Sagar Gaude, PIO.

13. Thus, the showcause notice issued against Shri. Sagar Gaude, 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