

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 29/2023

In

Complaint No.40/2022/SIC

Michael Mascarenhas,
6/23A, "Lily Villa, Sonar Bhat",
Saligao, Bardez-Goa 403511.

-----Complainant

v/s

1. The Block Development Officer I & II,
Mapusa, Bardez-Goa.

2. Village Panchayat Secretary,
Village Panchayat of Anjuna-Caisua,
Bardez-Goa.

-----Opponents

Relevant dates emerging from penalty proceeding:

Order passed in Complaint No. 40/2022/SIC	: 22/05/2023
Show cause notice issued to PIO	: 05/06/2023
Beginning of penalty proceeding	: 26/06/2023
Decided on	: 18/10/2023

ORDER

1. The penalty proceeding against Opponent Public Information Officer (PIO), Shri. Dharmendra Govekar, the then Secretary and Public Information Officer of Village Panchayat, Anjuna- Caisua has been initiated vide showcause notice dated 05/06/2023, issued under Section 20(1) and 20(2) of the Right to Information Act, 2005 (hereinafter referred to as the "Act"), for denying the information and defying the provisions of the Act and the authorities.
2. The Commission has discussed complete details of this case in the order dated 22/05/2023. Nevertheless, the facts are reiterated in brief in order to appraise the matter in its proper perspective.
3. The complainant, vide application dated 13/06/2022 had sought certain information from the PIO which according to the complainant was denied by the PIO. Though the complainant had filed first appeal, the same was not decided by the First Appellate Authority (FAA) within the mandatory period. Being aggrieved, the complainant filed second appeal before the Commission.

4. The Commission after due proceeding, disposed the appeal vide order dated 22/05/2023. It was held that the PIO is guilty of not furnishing complete information at the first instance and later, not justifying his action as required under Section 19 (5) of the Act, before the Commission. The Commission observed that, the PIO has shown complete disrespect to the provisions of the Act and also to the authorities designated under the Act. Accordingly, by holding the PIO guilty of denying the information and defying the provisions of the Act as well as the authorities, the PIO was issued show cause notice with direction to submit written reply stating as to why penalty under Section 20 (1) and 20 (2) should not be imposed against him.
5. The penalty proceeding was initiated against Shri. Dharmendra Govekar, PIO. Shri. Dharmendra Govekar appeared alongwith Advocate Kapil D. Kerkar and filed reply dated 26/06/2023. PIO further on 13/09/2023 filed an affidavit.
6. PIO stated that, he had already furnished the information as available, to the complainant and had communicated the complainant regarding the status of the remaining information. That, he has not withheld any information malafidely or deliberately. Thus, penalty under Section 20 of the Act cannot be justified, hence, he requests for withdrawal of the show cause notice.
7. Upon perusal it is seen that, the complainant in the present matter had requested for information on five points with respect to construction of road at Baman waddo, Anjuna, Bardez-Goa. PIO vide reply dated 26/07/2023 had informed the complainant that the information on point nos. 1 to 5 is nil. Complainant was aggrieved by the said reply since he did not receive the requested information.
8. PIO, on the other hand has maintained that the requested information is 'Nil', meaning, no any documents pertaining to the said application exist in the records of the PIO. Further, PIO vide an affidavit filed before the Commission on 13/09/2023 has stated that, the information sought by the appellant is actually not available in the Village Panchayat office and the same was informed to the complainant. Since the information is not available in office, the information cannot be furnished.
9. The Commission notes that the complainant had sought the information pertaining to construction of road at Baman waddo, Anjuna, Bardez –Goa, under the presumption that the records of Village Panchayat of Anjuna–Caisua should have the said information.

The PIO was held guilty of not furnishing the information since the PIO had failed to justify his action before the Commission, accordingly, show cause notice was issued to the PIO.

10. However, upon perusal of the affidavit filed by the PIO, the Commission observes that the said information does not exist in PIO's office and that the PIO cannot be directed to furnish any information which is not available in his records. Since the statement has been made by the PIO affirming and by signing an affidavit, the Commission accepts the same. Going by the said affidavit, the Commission cannot expect the PIO to furnish non-existing information or to create any such information. Needless to say that, in case at any time in future the statement in the said affidavit is found false, the person swearing it would be liable for action for perjury.
11. Hence, with respect to the facts of the instant penalty proceeding, the Commission finds that the present case does not warrant levy of penalty under Section 20 of the Act against Shri. Dharmendra Govekar, PIO.
12. In the light of above discussion, the show cause notice issued against Shri. Dharmendra Govekar, 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