

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No.31/2022

In

Appeal No. 88/2022/SIC

Shri. Anil V. Sawant Dessai,
H.No. 189/9, "SAIEE-KUNJ",
Sonfator-Xeldem Housing Board,
Xeldem, Quepem-Goa 403705.

-----Appellant

v/s

1. The Public Information Officer,
Office of the Secretary,
Village Panchayat Xeldem,
Xeldem, Quepem-Goa 403705.
2. The First Appellate Authority,
Office of the Block Development Officer,
B.D.O. of Quepem Taluka,
Quepem-Goa 403705.

-----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 88/2022/SIC	: 22/08/2022
Show cause notice issued to PIO	: 24/08/2022
Beginning of penalty proceeding	: 06/10/2022
Decided on	: 16/01/2023

ORDER

1. The penalty proceeding has been initiated against 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 order of the appellate authority.
2. The complete details of this case are discussed in the order dated 22/08/2022 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 any information inspite of the direction of the First Appellate 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 22/08/2022. It was concluded that the PIO is guilty of not furnishing the information to the appellant, and the said

conduct amounts to contravention of Section 7 (1) of the Act and the said conduct deserves penal action under Section 20 of the Act. The Commission found that Shri. Ravindra Wadikar, PIO appeared alongwith his lawyer Advocate Prakash A. G. Dessai and undertook to furnish the information, however, he neither appeared for subsequent hearing, nor filed any reply. Such conduct of the PIO is contrary to the requirements of the Act, therefore, the PIO was issued show cause notice seeking his reply as to why penalty as provided in sub Section (1) and (2) of Section 20 of the Act, should not be imposed on him.

5. Penalty proceeding was initiated against Shri. Ravindra Wadikar, PIO and Secretary of Village Panchayat Xeldem. PIO remained present alongwith Advocate Prakash A. G. Dessai and filed reply on 06/10/2022. Appellant appeared in person, filed submission on 14/11/2022 and counter reply on 06/12/2022.
6. PIO stated that, the appellant herein had agreed to withdraw the present appeal before the Civil Court at Quepem Goa, in R.C.S. No.70/2021/B, by way of filing the consent terms in the said case /suit and the Court has passed the consent decree dated 09/05/2022, and due this reason, the information asked by the appellant has remained to be issued, as the appellant has shown bonafide interest in withdrawing the present matter.

PIO further stated that, appellant had also agreed to withdraw this appeal, on enquiry before the police at Quepem-Goa, based on a police complaint filed by the PIO against the appellant. PIO further submitted that, issue of furnishing information has been decided between the concerned parties and there will be no any further claim against the PIO, by the appellant, pertaining to the issuance of information under the Act, in view of the consent decree of the Civil Court as stated above.

PIO further stated that, the present penalty matter be dropped and disposed considering the consent decree passed by the Civil Court as stated above and the show cause notice be revoked as the penalty proceeding is not maintainable .

7. Appellant while objecting to the reply of PIO stated that, the PIO, instead of furnishing information has been filing police complaints against him, due which he has suffered psychologically and financially. He has requested for the information in large public interest, the information is available in public domain, hence the PIO is mandated to furnish the same.

Appellant further stated that, he has never given his consent before any Court to withdraw the present penalty proceeding being heard before the Commission, hence there is no question of withdrawing the matter, rather he is seeking the information from the PIO. That, there is no any connection between the PIO in the present matter and the Court matter under R.C.S. No. 70/2021/B of decree dated 09/05/2022, referred by the PIO.

Appellant further submitted that, the PIO has not furnished the information as directed by the Commission vide order dated 22/08/2022, and trying to mislead the Commission by trying to connect the present penalty proceeding with the matter in the Civil Court of Quepem under R.C.S. No. 70/2021/B of consent decree dated 09/05/2022, which has no relevance with the present matter. Hence the appellant presses for heavy penalty on the PIO.

8. Advocate Prakash A. G. Dessai, arguing on behalf of the PIO contended that, the Commission must withdraw the show cause notice issued against the PIO since the appellant has given undertaking before the Civil Court of Quepem Goa. The Civil Court has passed a consent decree based on the consent terms agreed by the appellant. Hence, he requests for withdrawal of show cause notice and dropping of penalty proceeding.
9. The Commission has perused the records of the appeal as well as the present penalty proceeding. It is noted that the appellant vide application dated 07/12/2021 had sought information on 12 points from PIO. No information was furnished by the PIO within the stipulated period of 30 days. Later, FAA vide order dated 17/02/2022 had directed the PIO to furnish the information free of cost, within 10 days. In addition to that, PIO was directed to follow the provisions of the Act. Appellant vide reminder dated 28/02/2022 requested PIO to comply with the order of FAA, yet PIO did not furnish any information.
10. Being aggrieved, appellant had filed second appeal before the Commission. After hearing both the sides, the Commission had held that this is a clear case of contravention of Section 7 (1) of the Act by the PIO and he had disobeyed the directions of the FAA and also not fulfilled the undertaking given before the Commission. The Commission vide order dated 22/08/2022 directed the PIO to furnish the information within 20 days and concluded that the guilty PIO needs to be punished under Section 20 of the Act, for his failure to furnish information sought by the appellant and not complying with the direction of the appellate authority. Thereafter PIO was issued

show cause notice seeking his reply as to why penalty as provided in Section 20 (1) and /or 20 (2) should not be imposed on him.

11. During the penalty proceeding it is observed that the PIO has not complied with the direction of the Commission and instead of furnishing the information, has taken totally wrong defence, irrelevant to the instant matter. As contended by the PIO, the appellant might have filed /agreed with consent terms in R.C.S. No. 70/2021/B before the Civil Court of Quepem Goa and the said Court might have decided the case based on the consent note. However, the referred matter was not before this authority, nor the Commission comes under the Jurisdiction of the Civil Court of Quepem Goa, thus the Commission holds that the defence taken by the PIO is completely inappropriate and that any undertaking, if at all given by the appellant before any authority outside the purview of the Act cannot be considered by the Commission.
12. Contrary to the contention of the PIO, appellant has clarified that he has never given consent before any authority to withdraw the present penalty proceeding and that he is seeking the information in larger public interest, hence he requests the Commission to penalize PIO for not furnishing the information and for trying to mislead the authority by connecting matter in Civil Court of Quepem Goa which has no relevance, to the present penalty proceeding.
13. With the facts of the matter as mentioned above the Commission finds that the PIO has denied the information to the appellant in violation of Section 7 (1) of the Act. PIO had three opportunities to furnish the information, first – during the stipulated period of 30 days from the receipt of the application, second – after the direction of the FAA and third – in compliance with the order of the Commission. However, PIO failed to furnish the information on all three occasions. Repeated failure to furnish the information cannot be taken casually by the Commission as it appears that the said action of the PIO is with malafide intention. It is also noted that instead of complying with the order of the Commission, PIO has gone to the extent of lodging a complaint against the appellant in Quepem Police Station accusing him of cheating the Court.
14. RTI Act has been enacted to bring transparency and accountability in the public administration. Here in this case, appellant contends that he is seeking the said information in larger public interest. The said information is in public domain and PIO was required to furnish the complete information. However, instead of furnishing the information, which is preliminary responsibility under the Act, PIO's conduct

clearly indicated that he has no intention to comply with the directions issued by the authorities including the Commission, designated under the Act.

15. 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.”

16. 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 limit 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.”

17. In another matter, the Honorable High Court of Gujarat in Special Civil application no. 8376 of 2010 in the case of Umesh M. Patel V/s State of Gujarat has held that penalty can be imposed on PIO if First Appellate Authority's order is not complied. In yet another matter the Honorable High Court of Bombay at Goa Bench in Writ Petition no. 304/2011, Johnson V. 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.

18. In the background of the findings of the Commission and subscribing to ratio laid down by 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 FAA and the Commission.

19. From the conduct of the 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 on the PIO.

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

- a) The respondent PIO, Secretary, Village Panchayat of Xeldem, Shri. Ravindra Wadikar 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 the order of the FAA and the Commission.
- 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 February 2023 to March 2023, and the amount shall be credited to the Government treasury.
- c) The Registry is directed to send copy of this order to the Block Development Officer (BDO), Quepem Taluka, Quepem-Goa for information and appropriate action.

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