

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 31/2023

In

Appeal No.74/2023/SIC

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

-----Appellant

v/s

1. The Public Information Officer,
Rajendra Bagkar (Head Clerk),
Mapusa Municipal Council,
Mapusa-Goa 403507.

2. The First Appellate Authority,
Shri. Amitesh Shirvoikar (Chief Officer),
Mapusa Municipal Council,
Mapusa-Goa 403507.

-----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 74/2023/SIC	: 19/06/2023
Show cause notice issued to PIO	: 04/07/2023
Beginning of penalty proceeding	: 17/07/2023
Decided on	: 25/09/2023

ORDER

1. The penalty proceeding against Respondent Public Information Officer (PIO), Shri. Rajendra Bagkar, Head Clerk, Mapusa Municipal Council has been initiated vide showcause notice dated 04/07/2023, issued under Section 20(1) and 20(2) of the Right to Information Act, 2005 (hereinafter referred to as the “Act”), for not complying with the direction of the appellate authority and the Commission.
2. The complete details of this case are discussed in the order dated 19/06/2023 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 PIO. He did not receive any 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 information and penal action against the PIO.

4. The Commission after hearing both the sides disposed the appeal vide order dated 19/06/2023. It was concluded that the PIO has failed to provide information as sought by the appellant and the said failure amounts to contravention of Section 7 (1) of the Act. The Commission found that, Firstly- PIO did not furnish the information within the stipulated period, Secondly- PIO failed to comply with the direction of the FAA and Thirdly- PIO maintained his adamant stand of not furnishing the information inspite of the opportunity provided by the Commission. The Commission held that, such irresponsible and stubborn conduct of the PIO is not acceptable, and the PIO was issued showcase notice seeking his reply as to why penalty as provided in Section 20 (1) and / or 20 (2) of the Act should not be imposed on him.
5. Penalty proceeding was initiated against Shri. Rajendra Bagkar, the then PIO of Mapusa Municipal Council. PIO appeared and vide submission dated 06/07/2023 stated that, he has furnished the information through Registered AD, as directed by the Commission and the appellant had received the same. PIO also filed copy of the acknowledgement received from Department of Posts. Appellant appeared and filed reply cum arguments dated 01/08/2023. PIO undertook to file counter reply to the reply cum arguments of the appellant, however, did not file any further submission.
6. Appellant stated that, the PIO has furnished incomplete and false information. PIO has provided noting sheets with respect to information on point no. 1 (a), (b), (c), (e), (f) and (h) which is incomplete. Similarly, regarding point no. 1 (d) and 1 (i) PIO has stated that the information is not readily available, search is going in the office, however, PIO has not taken any appropriate action such as filing police complaint, if the said information / file is not traceable in his office.

Appellant further submitted that the PIO has not furnished complete and correct information, and has not taken any appropriate action, hence, he requests the Commission to impose penalty against the PIO.

7. The Commission has perused the records of the present penalty proceeding as well as records of Appeal No. 74/2023/SIC decided vide order dated 19/06/2023. It is seen that, the appellant has sought information with regards to his complaints filed before the public authority, i.e. Mapusa Municipal Council, against alleged illegal constructions as mentioned in the application. PIO failed to

respond within the stipulated period of 30 days, then failed to comply with the order of the FAA. PIO was given multiple opportunities to furnish the information during the appeal proceeding, yet no attempts were seen on his part, in order to furnish the information.

8. It was only after the show cause notice dated 04/07/2023 was issued to him, PIO vide reply dated 06/07/2023 informed the Commission that he had dispatched the information via Registered AD Post. It is seen from the acknowledgement card of Department of Posts that the appellant had received the said information on 20/06/2023.
9. This being the case insofar as the Commission finds that the appellant who waited patiently for the information he had sought, finally received some information, yet according to him the said information is neither complete, nor correct. PIO was required to appear and defend his action when the appellant had raised objections with respect to the information furnished. However, the Commission is flabbergasted to see that the PIO paid no attention to the grievance of the appellant, regarding correctness of the information. PIO did not respond to the above mentioned grievance of the appellant.
10. Similarly, with respect to information on point no. 1 (d) and 1 (i), PIO was required to take appropriate action if the said information was not available in his records. Search and furnishing of information is time bound under the Act and PIO does not get indefinite time to take appropriate action.
11. Thus, the Commission finds that, the PIO, Shri. Rajendra Bagkar has failed to furnish complete and correct information, also failed to take appropriate action if the information is not traceable. Further, PIO has failed to show cause as to why penalty under Section 20 should not be imposed against him. The PIO has shown scant respect, rather no respect to the Act and the authorities constituted under the Act. Such obdurate conduct on the part of the PIO is totally unacceptable vis-à-vis the intent of the Act.
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. In the background of the findings of the Commission and subscribing to the ratio laid down by the Hon'ble High Courts in the above mentioned judgments, PIO in the present matter is held guilty of contravention of Section 7 (1) of the Act, for not complying with the direction of the FAA and the Commission. 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. Hence, the Commission passes the following order:-

- a) Shri. Rajendra Bagkar, the then PIO, Mapusa Municipal Council shall pay Rs. 4,000/- (Rupees Four 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 in the specified time frame.
- b) Aforesaid amount of penalty shall be deducted from the salary of PIO and the amount shall be credited to the Government treasury.

With the above directions, the present penalty 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