

GOA STATE INFORMATION COMMISSION

“Kamat Towers” 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in Website: www.scic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No.36/2022

In

Appeal No. 254/2021/SIC

Mr. Bharat L. Candolkar,
R/o. Vaddy Candolim,
Bardez- Goa, 403515.

-----Appellant

v/s

1.The Public Information Officer,
The Secretary,
Village Panchayat Candolim
Candolim, Bardez-Goa 403515.

2. The First Appellate Authority,
Block Development Authority,
Mapusa, Bardez-Goa.

-----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 254/2021/SIC	: 23/09/2022
Show cause notice issued to PIO	: 29/09/2022
Beginning of penalty proceeding	: 01/11/2022
Decided on	: 27/03/2023

ORDER

1. The penalty proceeding against Respondent Public Information Officer (PIO), Lourenco Rebeiro, Secretary, Village Panchayat Candolim Bardez-Goa has been initiated vide show cause notice dated 29/09/2022 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 23/09/2022. Nevertheless, the facts are reiterated in brief in order to appraise the matter in its proper perspective.
3. The appellant vide application dated 02/06/2021, had sought certain information from PIO. Aggrieved by non furnishing of the complete information, he filed first appeal before First Appellate Authority (FAA). FAA directed PIO to provide for inspection of records and

furnish complete information. PIO did not comply with the said order, hence the appellant approached the Commission by way of the second appeal.

4. The Commission, after conducting proceeding disposed the appeal vide order dated 23/09/2022. It was held that the PIO has not bothered to file reply and consistently evaded the information the appellant was seeking. It was also held that PIO has no concern to obligations under the Act and his adamant and deplorable conduct is punishable under Section 20 (1) and 20 (2) of the Act. The Commission vide notice dated 29/09/2022 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. Lourenco Rebeiro, PIO. Pursuant to the notice, appellant appeared alongwith Advocate Atish P. Mandrekar and filed a submission dated 18/10/2022 giving details of present posting of Shri. Lourenco Rebeiro. Shri. Rajendra Gawas, the present PIO appeared in person and filed reply on 12/12/2022, 31/01/2023 and 21/02/2023. Shri. Lourenco Rebeiro, the then PIO was represented by Advocate Siddhesh Prabhudesai, filed reply dated 03/01/2023.
6. Shri. Rajendra Gawas, the present PIO stated that, he has furnished the desired information to the appellant, as directed by the Commission vide order dated 23/09/2022 and that, he has fully complied with the directions of the Commission.
7. Shri. Lourenco Rebeiro, the then PIO stated that, he had issued the available information, within the stipulated period. He further contended that, since he was holding charge of two Village Panchayats he could not comply with the direction of the FAA and asked the office staff to search and furnish the information. Subsequently he was transferred in May 2022 and could not pursue

the matter. That, he has not deliberately concealed or refused to furnish any information.

8. Appellant stated that he requests the Commission to impose penalty on the then PIO since he did not furnish complete information. Advocate Atish P. Mandrekar, while arguing submitted that the Village Panchayat had issued trade license only to one shop and the business is carried out in more than one shop, trade license is not given to these shops. That, he is seeking the same information and the said information was concealed by the then PIO in order to cover-up illegalities allowed by the said Village Panchayat.
9. Advocate Siddhesh Prabhudesai argued on behalf of the then PIO Shri. Lourenco Rebeiro stating that, the then PIO had furnished the available information, hence no penalty be imposed on him.
10. Upon perusal it is seen that, Shri. Lourenco Rebeiro, the then PIO though had issued reply within the stipulated period, had denied most of the information to the appellant. Later, he did not comply with the direction of the FAA to provide for inspection of the relevant records. The Commission during the appeal proceeding had found the approach of the then PIO very casual and that he was always trying to evade the disclosure of complete information. Advocate Siddhesh Prabhudesai towed the same line by not filing any reply on behalf of the then PIO, inspite of his undertaking to file a reply. Advocate Siddhesh Prabhudesai finally filed a reply before the Commission during the present penalty proceeding, however, the Commission finds the said reply unsatisfactory. The Commission notes that, the then PIO before his transfer had sufficient opportunities to furnish the complete information to the appellant, yet he evaded the disclosure and later stated that he could not furnish the remaining information due to his transfer.
11. On the other hand, Shri. Rajendra Gawas, the present PIO was found to be more co-operative and respectful towards the Act as well the

authority. He attended penalty proceeding regularly and complied with the direction of the Commission to furnish remaining information to the appellant. Shri. Rajendra Gawas, the present PIO vide reply dated 31/01/2023 and 21/02/2023 furnished the remaining information in compliance with the order of the Commission.

12. On the contrary, it appears that, Shri. Lourenco Rebeiro, the then PIO against whom show cause notice was issued, was never willing to furnish the remaining information to the appellant. Similarly, his approach during the appeal proceeding as well as during the present penalty proceeding was found to be casual, not in accordance with the spirit of the Act. It was possible for the then PIO to furnish the information during the stipulated period or after the disposal of the first appeal. Therefore, the Commission cannot endorse the stand of the then PIO that he could not pursue the matter as in May 2022 he was transferred elsewhere, rather the Commission finds that he could have furnished the remaining information before being relieved from the post of Secretary of Village Panchayat Candolim.

13. The Honorable High Court of Himachal Pradesh in LPA No.4009 of 2013, Sanjay Bhagwati V/s Ved Prakash and ors decided on 05/11/2009 has held in para 16:-

" Bearing in mind the laudable object of the Act mere inaction or laid back attitude on behalf of the appellant cannot exonerate him of his culpability because higher is the post, not only more but greater are the responsibilities. Even after being put to notice by the petitioner that the information supplied to him is incorrect, yet the appellant took no steps whatsoever to ensure that the true, correct and not incorrect, incomplete or misleading information is supplied to Respondent no.1. (Information seeker). If a person refuses to act, then his intention is absolutely clear and is a sufficient indicator of his lack of bonafides. After all malafide is nothing sort of lack of bonafides or good faith."

14. 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."

15. 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.

16. It is seen that Honorable High Courts in number of matters have held PIO guilty of different acts like not acting in the manner prescribed under the Act, for his filibustering tactics, for furnishing the information after the stipulated period of 30 days, for not complying directions of FAA and have held that malafide is nothing but lack of bonafides or good faith. The then PIO in the present matter is held guilty of not furnishing the part information and guilty of not complying with the directions of the FAA and the Commission.

17. 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 on the then PIO.

18. Hence, the Commission passes the following order:-

a) Shri. Lourenco Rebeiro, the then PIO, Secretary of Village Panchayat Candolim 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 appellate authorities.

b) Aforeside amount of penalty shall be deducted from the salary of the then PIO in two installments of equal amount of Rs. 5000/- each, beginning from the salary of April 2023 to May 2023, and the amount shall be credited to the Government Treasury.

19. 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

