GOA STATE INFORMATION COMMISSION
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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 37/2023
In
Appeal No. 280/2022/SIC

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

v/s

1. The Public Information Officer,
Office of the Administrator of Devalaya cum
Office of the Mamlatdar- Sanguem,
Sanguem Taluka, Sanguem-Goa, 403604.

2. The First Appellate Authority,
Office of the Dy. Collector-Sanguem,
Sanguem-Goa, 403604. ------Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 280/2022/SIC	: 10/07/2023
Show cause notice issued to PIO	: 31/07/2023
Beginning of penalty proceeding	: 07/08/2023
Decided on	: 25/09/2023

O R D E R

1. The penalty proceeding against Respondent Public Information Officer (PIO), Shri. Rajesh G. Sakhalkar, the then Administrator of Devalaya cum Mamlatdar of Sanguem has been initiated vide show cause notice dated 31/07/2023, issued under Section 20 (1) 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 10/07/2023. Nevertheless, the facts are reiterated in brief in order to appraise the matter in its proper perspective.

3. The appellant had sought from the PIO information pertaining to Shree Nagnath Betal Devasthan, Dhadem, Sanguem. Further, appellant filed first appeal against the denial of the information by the PIO. The said appeal was dismissed by the FAA by upholding PIO's stand, thus the appellant preferred second appeal before the Commission.

4. The Commission after conducting due proceeding disposed the appeal vide order dated 10/07/2023. It was held that though the information sought pertained to Shree Nagnath Betal Devasthan which is not a public authority, the PIO, being the Administrator of Devalayas in his Taluka, has access to the information of Devasthan in his jurisdiction, hence required to furnish the information. The Commission concluded that the PIO is guilty of contravention of Section 7 (1) of the Act and is liable for penal action under Section 20 (1) of the Act.

5. Show cause notice was issued to the PIO seeking his explanation as to why action as contemplated under Section 20 (1) of the Act should not be taken against him. The penalty proceeding was initiated against Shri. Rajesh G. Sakhalkar, PIO. Pursuant to the notice, PIO appeared in person and filed application dated 11/08/2023 requesting grant of time to file reply. The application was allowed. Further, PIO filed reply dated 23/08/2023 and additional reply dated 08/09/2023. Written statement from the appellant was received via email in the entry registry dated 25/09/2023

6. Shri. Rajesh Sakhalkar, PIO stated that, the application of the appellant was promptly replied by him in utmost diligent manner, acting in good faith and under bonafide belief, keeping in view the ratio laid down by the State Chief Information Commissioner vide order dated 17/08/2017, in Appeal No. 135/SCIC/2016. Also, the PIO neither refused to receive the said application nor refused to furnish the information without any reasonable cause. That, the PIO has not acted in any manner committing acts attracting penalty under Section 20 (1) of the Act.

7. PIO further submitted that, the information sought was voluminous, extensive, not readily available and it was practically infeasible to furnish the said information or provide for inspection, despite best efforts, diverting time of the then PIO and his staff. That, there is no deliberate or intentional defiance by him in compliance of the provisions of the Act, therefore, he prays for withdrawal of show cause notice.

8. Appellant vide his submission prayed for imposing penalty on the PIO under Section 20 (1) of the Act and appropriate action against the PIO for not furnishing the information to him.

9. The Commission has perused the records of the present penalty proceeding and that of the relevant appeal disposed vide order dated

10/07/2023. The appellant had sought information pertaining to Shree Nagnath Betal Devasthan, Dhadem, Sanguem from PIO/ Mamlatdar of Sanguem who is also the Administrator of Devalayas in Sanguem Taluka. PIO, relying on judgment by the State Chief Information Commissioner in Appeal No. 135/SCIC/2016 dated 17/08/2017 informed the appellant that Devasthans are not under the RTI Act, 2005. Appellant, being aggrieved by the reply, approached First Appellate Authority and later, the Commission.

10. It is seen that, the then PIO Shri. Rajesh G. Sakhalkar, though informed the appellant that the Devasthan does not come under the ambit of the Act, later he along with his staff made attempts to trace the information. Further, the Commission finds substance in the argument of the PIO during the penalty proceeding that the Devasthan has not filed the required documents to the Mamlatdar/ Administrator of Devalayas, hence, he could not provide inspection, nor could furnish any information to the appellant. Although the PIO is primarily responsible for furnishing the information within the stipulated period of 30 days from receipt of the request, he cannot be compelled to collate and furnish the information which was not provided to him by the Devasthan.

11. During the proceeding Shri. Rajesh G. Sakhalkar, PIO was transferred from the post of Mamlatdar of Sanguem /Administrator of Devalayas, thus, he is no more PIO of the said office. It was basically due to his reliance on the order dated 17/08/2017 passed by the State Chief Information Commissioner in Appeal No. 135/SCIC/2016, that he failed to provide inspection or/ and furnish information to the appellant and later, when he initiated efforts to get the information from the Devasthan, he was transferred elsewhere.

12. The Commission notes that, the PIO had not denied the information deliberately or with any malafide intention. The Hon'ble High Court of Bombay at Goa, in Writ Petition No. 205/2007, Shri. A. .A. Parulekar v/s. Goa State Information Commission and others has held:-

> "11. 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."

13. Subscribing to the ratio laid down by the Hon'ble High Court of Bombay as mentioned above, the Commission holds that, though the PIO had failed to furnish the information to the appellant, the said failure was not deliberate or intentional. Also, the Commission has already held that the PIO initially did not furnish information relying

on the judgment passed by the State Chief Information Commissioner in Appeal No. 135/SCIC/2016 and that although the stand of relying on the said order was not correct, the decision was taken by the PIO by interpreting the said order within his wisdom. No deliberate malafide was found in the said interpretation by the PIO.

14. In the light of above discussion, the Commission concludes that the respondent PIO in the instant matter does not deserve imposition of penalty, and the show cause notice issued against him needs to be withdrawn.

15. Hence, the show cause notice dated 31/07/2023 issued against Shri. Rajesh G. Sakhalkar, the then PIO, Mamlatdar of Sanguem/ Administrator of Devalayas stands withdrawn and the penalty proceeding initiated against him is closed.

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