

**GOA STATE INFORMATION COMMISSION**

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**Shri. Sanjay N. Dhavalikar**, State Information Commissioner

**Penalty No.40/2022**

**In**

**Appeal No. 14/2022/SIC**

Mr. M. Lakshmikantha,  
R/o. Flat no. B2/05-06, 1<sup>st</sup> Floor,  
Karma Residential Enclave,  
Near Pai Hospital, Vaddem,  
Vasco-Da-Gama, Goa 403802.

-----Appellant

**v/s**

1.The Public Information Officer,  
Municipal Engineer,  
Mormugao Municipal Council,  
Municipal Building,  
Vasco-Da-Gama, Goa.

2. The First Appellate Authority,  
The Chief Officer,  
Mormugao Municipal Council,  
Municipal Building,  
Vasco-Da-Gama, Goa.

-----Respondents

**Relevant dates emerging from penalty proceeding:**

Order passed in Appeal No. 14/2022/SIC	: 10/10/2022
Show cause notice issued to PIO	: 09/11/2022
Beginning of penalty proceeding	: 14/11/2022
Decided on	: 20/02/2023

**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 directions of the FAA and the Commission.
2. The complete details of this case are discussed in the order dated 10/10/2022, 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 10/10/2022. 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 the information sought by the appellant qualifies as information under Section 2 (f) of the Act, yet PIO did not furnish the same. Shri. Francisco X. Rodrigues, the then PIO deputed Advocate V. V. Pednekar and later appointed Advocate Haider Khilji and Advocate Karishma Jogi to appear before the Commission. However, no information was furnished inspite of opportunities provided by the Commission. 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. Francisco X. Rodrigues, the then PIO, Mormugao Municipal Council. Shri. Francisco X. Rodrigues appeared alongwith Shri. Uday Wadkar, the present PIO and Advocate Karishma Jogi, legal representative. Appellant appeared in person and filed submission dated 07/11/2022, 22/11/2022 and 14/12/2022. Shri. Francisco X. Rodrigues, the then PIO filed reply to the show cause notice on 14/11/2022, whereas Shri. Uday Wadkar, the present PIO filed reply on 05/12/2022.
6. Shri. Francisco X. Rodrigues stated that, though he was the PIO at the time of the receipt of the application, vide order dated 21/10/2021 he was promoted and posted in the office of the Goa State Infrastructure Development Corporation and was given additional charge of two other offices including Mormugao Municipal Council, the public authority in the instant case. Due to the continuous workload at these authorities, he could not concentrate on the RTI matters of Mormugao Municipal Council. Also, after receiving the show cause notice he made efforts to provide the requisite information, however, the concerned staff informed him that the relevant file is lost. The then PIO further stated that he had instructed in his noting to file F.I.R. at the Police Station with respect to the missing documents, and that he was relieved from Mormugao Municipal Council vide order dated 26/08/2022 and new officer took over as PIO.
7. Shri. Uday Wadkar, the present PIO submitted that, since the renovation work of municipality building was going on and there was continuous shifting of files from one place to another in view of the

renovation, the said file containing the information/ documents was misplaced. It was further submitted that, the PIO and Chief Officer made all the efforts to trace the file but due to the said renovation work the file could not be traced and therefore the information could not be furnished in time. That, the non furnishing of information in due time was not intentional.

8. Appellant stated that, Shri. Francisco X. Rodrigues was the PIO on the day of the application, he did not furnish any information within the stipulated period. PIO after the expiry of stipulated period requested to submit some relevant documents including copies of previous complaint filed by him against illegal construction. These documents were provided to the PIO yet, neither appropriate corrective action was initiated by the authority, nor any information was furnished by the PIO. Appellant further stated that upon the request of the then and present PIO, he visited the office of the authority more than once but relevant documents were not provided for inspection.
9. Appellant submitted that he is a senior citizen of 82 years age and have gone through mental harassment since he filed the application. He was seeking this information in order to expose wrong doings and corrupt practices of the authority, of allowing illegal construction. After all the efforts, he has not received the requested information, hence, he requests for imposing penalty against the PIO and compensation from the authority.
10. The Commission has perused the records of the present penalty matter as well as the appeal. It is seen that, the appellant vide application dated 19/08/2021 had sought information regarding the detail measurements length and breadth including the super built up areas of the four flats situated in Karma Residential Enclave, Vaddem, Vasco, tradelicense numbers to some establishments, and recording of the meeting held on 30/03/2021 by the Chief Officer of Mormugao Municipal Council. The said information was not furnished by the then PIO within the stipulated period of 30 days. Later, FAA directed the PIO to furnish the information within 15 days, but the said direction was not complied by the PIO.
11. During the proceeding of the second appeal as well as during the present penalty proceeding respondent PIO was represented by his legal representatives. Advocate V. V. Pednekar and Advocate Haider Khilji during appeal proceeding and Advocate Karishma Jogi during penalty proceeding on different occasions undertook to furnish the information but the compliance was not done. Finally, on 09/01/2023

while arguing on behalf of the then PIO, Advocate Karishma Jogi stated that, whatever information was available in records has been furnished and nothing more remains to be furnished. Advocate Karishma Jogi further submitted that due to the renovation work, office of the PIO was shifted elsewhere, during that period some files were misplaced, which includes files with respect to the information sought by the appellant, hence, PIO is unable to furnish the remaining information.

12. Contradicting the contention of Advocate Karishma Jogi on behalf of the PIO that some files went missing during the renovation work, appellant has pointed out that the said contention is not true. The Commission endorses the say of the appellant that, there was no renovation work undertaken during the stipulated period of 30 days and also till the first appeal was disposed. The application was filed on 19/08/2021 and the PIO had time till 18/09/2021 to furnish the information. Later, vide order dated 07/10/2021 FAA directed PIO to furnish the appellant the requested information within 15 days. Shifting of the office of PIO due to renovation work took much later, in 2022, according to the present PIO. Thus, the Commission finds that the PIO was functioning from his regular office till the first appeal was decided, hence, the entire records were in his custody, therefore, the onus to furnish the information was on him. If not, under Section 19 (5) of the Act, he was required to justify the denial of information, in which he has miserably failed.
13. Further, the Commission finds that Shri. Francisco X. Rodrigues, the then PIO, though was promoted and transferred /given additional charge of other establishments, his promotion and transfer order was issued on 21/10/2021, which shows clearly that he was having no burden of other work, during the stipulated period. Similarly, he took no action upon knowing that some files were missing from his records. The then PIO was relieved from Mormugao Municipal Council on 26/08/2022, meaning he had ample time to take appropriate action with respect to the missing files and bring the same before the Commission. However, no such action was taken by the then PIO.
14. The Hon'ble High Court of Delhi in W.P. (c) 7232/2009 in J.P. Agrawal v/s Union Bank of India, has held in Para 9:-

*"9. This Court in Mujibur Rehman v. Central Information Commission held that information seekers are to be furnished what they ask for and are not to be driven away through filibustering tactics and it is to ensure a culture of information*

*disclosure that penalty provisions have been provided in the RTI Act. The Act has conferred the duty to ensure compliance on the PIO. This Court in Vivek Mittal V. B.P. Srivastava, 2009 held that a PIO cannot escape his obligations and duties by stating that persons appointed under him had failed to collect documents and information; that the Act as framed casts obligation upon the PIO to ensure that the provisions of the Act are fully complied. Even otherwise, the settled position in law is that an officer entrusted with the duty is not to act mechanically."*

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. Subscribing to the ratio laid down by Hon'ble High Courts in the above mentioned matter, and considering the findings of the Commission, the Commission concludes that Shri. Francisco X. Rodrigues, the then PIO is guilty of contravention of Section 7 (1) of the Act and for not adhering to the direction of the FAA and not fulfilling the undertaking given before the Commission. Such a conduct of the then PIO is unacceptable, hence, the Commission is completely convinced that this is a fit case for imposing penalty under Section 20 (1) of the Act. However, considering the fact that the then PIO and the present PIO had taken efforts to furnish part information, the Commission shall keep the amount of penalty to minimum.
17. Appellant, who is senior citizen of 82 years of age, has claimed compensation from the authority for the monetary loss as well as physical and mental agony he had to go through due to the appeal proceeding. Appellant has claimed compensation as under:-

a) Advocate fees for drafting the appeal	Rs. 1250.00
b) Notary charges	Rs. 70.00
c) Photocopying charges	Rs. 270.00
d) Transport charges	Rs. 180.00
e) Mental and Physical Harassment	Rs. <u>5000.00</u>
Total	Rs. 6770.00

18. The Commission notes that the appellant had sought the said information in public interest, in order to expose wrong practices of the authority. He was compelled to file appeals before FAA and the Commission, attend the proceeding, visit PIO's office on number of occasions, all this leading to monetary loss as well physical and mental agony to the appellant. In such a case the Commission under Section 19 (8) (b) grants the compensation, as requested by the appellant and directs the authority to pay the amount of the compensation to the appellant.
19. Section 19 (8) (b) authorises the Commission to direct the public authority to compensate the complainant /appellant for any loss or other detriment suffered. Meaning, as and when required, the Commission shall direct the public authority, and not the PIO to pay compensation to the complainant / appellant. In view of this, show cause notice issued under Section 19 (8) (b) of the Act against the then PIO needs to be withdrawn and appropriate directions are required to be issued to the public authority, i.e. Mormugao Municipal Council, in the present case.
20. In the light of the above discussion, the Commission passes following order:-
  - a) The respondent Shri. Francisco X. Rodrigues, the then PIO, Mormugao Municipal Council shall pay Rs. 4,000/- (Rupees Four Thousand only) as penalty for contravention of Section 7 (1) of the Act.
  - b) Aforesaid amount of penalty shall be deducted from the salary of PIO of March 2023 and the amount shall be credited to the Government treasury.
  - c) The Mormugao Municipal Council, the public authority in the present matter shall pay Rs. 6,770/- (Rupees Six Thousand Seven Hundred Seventy only) towards compensation to the appellant, within 30 days from the receipt of this order.
  - d) The Chief Officer of Mormugao Municipal Council shall ensure the implementation of Para 20 (c), as directed by the Commission.
21. With the above direction, 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