

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No.41/2022

In

Appeal No. 100/2022/SIC

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

-----Appellant

v/s

1. The Public Information Officer,
Municipal Engineer (M.E.-I),
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. 100/2022/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. Diniz C.T. De Melo, 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. Diniz C.T. De Melo, the then PIO, Mormugao Municipal Council. Shri. Uday Wadkar, the present PIO appeared alongwith Advocate Karishma Jogi, legal representative. Appellant appeared in person and filed submission dated 07/11/2022, 22/11/2022, 14/12/2022 and 09/01/2023. Shri. Uday Wadkar, the present PIO filed reply on 05/12/2022.
6. 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.
7. Appellant stated that, the then PIO did not furnish any information within the stipulated period. In spite of number of visits to the office of the PIO, appellant was furnished some documents which were not sought by him and documents already furnished under Appeal No. 131/2020 were given again. This way PIO has tried to mislead the appellant and the authority. 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 information was not provided.

8. 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.
9. 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 27/09/2021 had sought information regarding occupancy certificate issued for 44 flats, 04 shops and club house built in the Karma Residential and Commercial Complex, Vaddem, Vasco during 1994-95 and occupancy certificate issued for 17 flats and 04 shops built during 1996-97. The said information was not furnished by the then PIO within the stipulated period of 30 days. Later, FAA directed PIO to furnish the information within 08 days, but the said direction was not complied by the PIO.
10. 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 only part information was furnished.
11. Advocate Karishma Jogi, while arguing on behalf of the then PIO, on 09/01/2023 stated that, all the available information has been furnished to the appellant. Advocate Karishma Jogi further stated that, the information sought was very old, bulky and the PIO had never denied the information, hence, the delay may be condoned considering the fact that the then PIO and the present PIO had taken efforts to search the records in order to furnish the information. Appellant who was present in person on 09/01/2023 acknowledged receipt of the information, sought by him vide application dated 27/09/2021, however pressed for penal action against the then PIO for the delay and requested for compensation from the public authority represented by the PIO.
12. Here, the Commission finds that though the PIO failed to furnish the information within the stipulated period, the said information belonged to 1994-95 and 1996-97, meaning more than two decades old. As stated by the legal representative of the PIO, the information was not denied, rather continuous efforts were taken to search the

records and finally, during the penalty proceeding, PIO succeeded in furnishing the information. Hence, no intentional malafide can be attributed to the action of the PIO.

13. The Hon'ble High Court of Bombay at Goa, in Writ Petition No. 704 of 2012, in Public Authority, office of the Chief Engineer and others v/s. Shri. Yeshwant Tolio Sawant, has held in Para 6:-

"6. However, in the present case, the learned Chief Information Commissioner has himself noted that the delay was marginal and further the PIO cannot be blamed for the same. The question, in such a situation, is really not about the quantum of penalty imposed, but imposition of such a penalty is a blot upon the career of the Officer, at least to some extent. In any case, the information was ultimately furnished, though after some marginal delay. In the facts and circumstances of the present case, the explanation for the marginal delay is required to be accepted and in fact, has been accepted by the learned Chief Information Commissioner. In such circumstances, therefore, no penalty ought to have been imposed upon the PIO."

14. Subscribing to the ratio laid down by the Hon'ble High Court, as mentioned above and considering the findings of the Commission in the present matter, the Commission concludes that the information has been furnished to the satisfaction of the appellant, though after marginal delay, the conduct of the PIO does not deserve invoking of Section 20 of the Act, hence, here is no need to penalise the PIO.

15. 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

16. 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.
17. 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.
18. In the light of above discussion, the Commission passes following order:-
 - a) Show cause notice issued under Section 20 (1) and (2) of the Act and Section 19 (8) (b) of the Act, against Shri. Diniz C. T. De Melo, the then PIO, Mormugao Municipal Council stands withdrawn and the penalty proceeding stands closed.
 - b) 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.
 - c) The Chief Officer of Mormugao Municipal Council shall ensure the implementation of Para (b), as directed by the Commission.
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