GOA STATE INFORMATION COMMISSION
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Penalty No. 34/2023
In
Complaint No. 10/2023/SCIC

Adv. Vidhya Pilankar,
R/o. Near Poornima Hotel
Ansabhat, Mapusa-Goa ….Complainant

V/s

The Public Information Officer (PIO),
Mr. Prathamesh Shankardas,
Block Development Officer,
Mapusa-Goa 403507 …. Opponent

Shri. Vishwas Satarkar, State Chief Information Commissioner

Decided on: 23/02/2024

O R D E R

1. While disposing the Complaint Proceedings bearing Complaint No. 10/2023/SCIC, the Commission vide its order dated 14/07/2023 directed the PIO, Shri. Prathamesh Shankardas, the Block Development Officer, Mapusa-Goa to comply with the order of the FAA dated 24/03/2023 and furnish the information to the Complainant within a period of fifteen days from the date of receipt of the order.

   The PIO was also directed to show cause as to why penalty should not be imposed against him in terms of section 20(1) of the Act and/or recommend to initiate disciplinary action against him in terms of section 20(2) of the Act.

2. Pursuant to the notice, the PIO Shri. Prathamesh Shankardas appeared and filed his reply on 29/08/2023, affidavit in reply dated 08/11/2023 and additional reply dated 25/01/2024.

3. The PIO, through his reply dated 29/08/2023, contended that upon the receipt of the order of the Commission, by letter dated 10/08/2023 he issued a Memorandum to the Extension Officer (Village Panchayat)-I directing him to search the information. However, the Extension Officer (Village Panchayat)-I, in response, replied to the Office of the BDO, Mapusa that, inspite of searching vigorously, he could not locate/trace the document. Further, according to the PIO, since the information is not available in the records of the Public authority, he lodged a Police Complaint before the Police Inspector, Mapusa Police Station Mapusa Goa for missing of the file. In order to lend support to his submissions, the PIO has produced on record the copy of Memorandum dated 10/08/2023, copy of reply received from the EOVP-I dated 23/08/2023 and copy of the Police Complaint dated 28/08/2023.

4. Since the said information is not available in the records of the Public authority, the Commission under Rule 5(i) of the Goa State Information Commission (Appeal Procedure) Rules, 2006, directed the PIO to file an Affidavit to that effect.

5. Accordingly, in the course of hearing on 08/11/2023, the PIO Shri. Prathmesh Shankardas, The Block Development Officer, Mapusa Goa, appeared and filed his Affidavit in reply and categorically submitted that he has made conscious efforts to

trace the file, however said file is not available in the records of the Public authority.

6. The PIO, through his additional reply dated 25/01/2024, submitted that, the notice of summons issued to him in this second appeal was not placed before him by the concerned office staff and due to inadvertence and fault of his staff, he was not aware of the second appeal proceeding and his non-appearance for the hearing was not intentional, but for a bonafide reason and that he tendered his unconditional apology for the lapse on his part.

7. It is a stand of the PIO that purported information is not available in the records of the BDO, Mapusa. A perusal of the Memorandum dated 31/10/2012 shows that the proposal for the house repair of Shri. Nandkumar Rohidas Gadekar was originally generated in the Office of Village Panchayat Anjuna, Caisua, Bardez Goa, and forwarded to the Office of BDO, Mapusa Goa for its physical verification and sanction. In the present case, the Office of BDO Mapusa after verification of documents and obtaining the site inspection report, directed the Secretary of Village Panchayat Anjuna Caisua to place the proposal in the meeting of the Panchayat for taking an appropriate decision thereby returning the original file to the Office of Secretary, Village Panchayat Anjuna, Caisua. From the above, it is established that the said information is not primarily generated in the Office of BDO and the same is ancillary, it is quite probable that the documents may not be available in the records of the Block Development Office at Mapusa Goa.

8. The role of the PIO is of information provider and he can only facilitate in providing the information which is available in the records. If the information is not available in the records, the only information that can be replied that no such documents are available.

9. The Hon'ble High Court of Punjab in the case **State of Punjab & Ors. V/s State Information Commissioner & Ors. (LNIND 2010 PNH 2809)** has observed as under:-

> *"The delay was not inordinate and there was no contumacious misconduct on the part of the officer to supply to the petitioner the information. The penalty provisions under Section 20 of the RTI Act are only to sensitize the public authorities that they should act with all due alacrity and not hold up the information which a person seek to obtain. It is not every delay that should be visited with penalty. If there is a delay and it is explained, the question will only revolve on whether the explanation is acceptable or not."*

10. The Hon'ble High Court of Bombay at Goa in the case **A.A. Parulekar v/s Goa State Information Commission & Anrs. (2010 (1) Mh.L.J.12)** has observed as under:-

> *"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."*

11. I have perused the content of affidavit in reply dated 08/11/2023. The PIO categorically submitted on oath that the purported information is not available in the records of Block

Development Office, Mapusa. The PIO also filed Police Complaint dated 28/08/2023 for missing of documents and also filed reminder to the Police Inspector, Mapusa Police Station, Mapusa Goa on 17/01/2024. The delay caused in furnishing the reply has been reasonably explained by the PIO. In case at any time, the contents of the said affidavit are found false, the person swearing it, would be liable for action for perjury.

12. In the light of above fact and circumstances, the show cause notice dated 02/08/2023 issued in the present Complaint Proceeding against the PIO, Shri. Prathamesh Shankardas is dropped

- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-
(Vishwas R. Satarkar)
State Chief Information Commissioner