

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Penalty No. 13/2009
In
Appeal No. 304/SIC/2008

Mr. Anil Fondu Naik Gaonkar,
R/o. Naik Wada,
Adcolna – Goa ... Appellant

V/s.

Public Information Officer,
V. P. Secretary,
Bhoma-Adcolna, Bhoma,
Ponda – Goa ... Respondent

Appellant in person.

Respondent in person.

ORDER
(24.10.2011)

1. By Judgment and Order dated 06.08.2009. This Commission (Hon'ble State Information Commissioner) ordered as under:-

“The Appeal is allowed. The Respondent to provide information to the Appellant in respect of the certified copy of site inspection carried on 13.08.2008 and certified copy of the entry which is in respect of notice despatched on 19.03.2008 having reference No. 2481 addressed to Shri Dashrath Popat Naik Gaonkar, within 20 days from the receipt of the Order.

The Block Development Officer, Ponda to hold an enquiry on the information sought in respect of inspection report dated 13.08.2008 and notice despatched on 19.03.2008 and fix the responsibility on the authority responsible for not providing the information and submit the report within 2 months.

A show cause notice to be issued to the Public Information Officer, the then Secretary – Savio Fernandes and Public Information Officer, the then Secretary –Pradeep S. Shirodkar why penalties should not be imposed; disciplinary proceedings should not be initiated and compensation to be awarded to the Appellant. The show cause notice to be returnable on 08.09.2009 at 10:30 a.m..”

2. In pursuance of the notice the P.I.Os have filed the replies to the show cause notice which are on record.

It is the case of Respondent, N. Sawant, that he had taken charge of the office on 11.09.2008 and holding the same till date. That during the period when disputed letter dated 19.03.2008 purported to have been dispatched one Shri Pradeep S. Shirodkar was holding the said office after which Shri Savio Fernandes took charge from 24.06.2008 till 25.08.2008. That thereafter Shri Ulhas Y. Shet was holding the said office from 26.08.2008 till 10.09.2008 and thereafter the Respondent took charge. The Respondent also refers to what Pradeep Shirodker and Savio stated in his reply. It is further the case of the Respondent that vide letter dated 08.08.2008 the parties were informed to remain present at the site on 13.08.2008 at 11:00am for removal of illegal obstruction/construction on access pathway at Naikwada-Adcolna. That in view of reply of Shri Savio Fernandes it is clear that no site inspection had been conducted on 13.08.2008. That though letter dated 19.03.2008 finds place in outward register it might not have been despatched to the concerned, therefore, it is not found in the V.P. records of this Panchayat. According to Respondent no proceedings lie as against him.

It is the case of P.I.O. Savio Fernandes that considering the fact that no site inspection was carried out on 13.08.2008 he cannot be held guilty for withholding or not giving information in as much as the information was not sought during his tenure. That the site inspection was cancelled on that day due to urgent official work of Sarpanch. According to him he is not liable or to be penalized for the documents which were missing during the tenure of Shri Pradeep V. Shirodker who was officially working as Panchayat Secretary between 03.10.2006 to 24.06.2008.

It is the case of P.I.O., Pradeep Shirodker, that notice was prepared by him, it was handed over to Clerk of the Village Panchayat, Meera Gaonkar for recording in outward register and that he told her to despatch the same after obtaining the signature of Sarpanch. That the same was kept on the table of Sarpanch for his signature, however, it was found missing. That the Sarpanch

upon being asked, feigned ignorance. According to him Sarpanch might have avoided to send any notice. That no notice has been issued to any of the parties.

3. Reply of the Appellant, Anil F. Naik Gaonkar, in respect of reply of Nilesh, Savio and Pradip Shirodker are on record. According to him they should be penalized as they are responsible.

4. Heard elaborate arguments of all the parties. According to the Appellant heavy punishment be imposed on them.

During the course of his arguments Shri Savio submitted that he is not at all concerned with the same. According to Pradip Shirodker particular records were not available.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

First of all I shall refer to the first part of the Order dated 06.08.2009. As per the same information to be furnished within 20 days. Whether the same is complied with.

It is seen from the record that by letter dated 04.09.2009 the Respondent, Nileshkumar Sawant informed the Appellant that the said copies are not available in the record, no site inspection was taken and that certified copies cannot be furnished. Under R.T.I., non-existing document cannot be furnished. If the document is not available there is no obligation to furnish the information.

6. Now I shall refer to the aspect of delay first. Show cause notice is issued. Replies are on record. Replies/applications filed by the Appellant are on record.

First it is to be seen whether there is any delay in furnishing information.

Application seeking information is dated 17.12.2008. Reply is dated 06.01.2009. This is in time. On 12.01.2009 Appeal before First Appellate Authority is filed. On 06.02.2009 Order passed is as under:-

“The Appeal is partly allowed. The Respondent is directed to furnish certified copy of said letter dated 19.03.2009 within five days of its availability in the office of Respondent, if after inquiry or otherwise at any point of time said letter is traced. The Appellant shall not pay any copying fees for the same but the certified copy shall be delivered at residence of Appellant at above given address by the Respondent.”

On 02.03.2009 Second Appeal before Commission is filed. Order passed on 06.08.2009 to furnish information within 20 days from the receipt of the Order and information is furnished on 04.09.2009 stating that the copies cannot be furnished. This is also in time. Therefore, there is no delay as such so as to attract section 20(1) of the R.T.I. Act.

7. Now I shall refer to the P.I.O. at the relevant time. As per the report/reports of B.D.O. as well as from records it is seen that the following officials were holding the office of Village Panchayat Secretary of V.P. of Bhoma-Adcolna and they were also P.I.Os:-

Sr. No.	Name of official working as V.P.S., Bhoma-Adcolna.	Period.
1.	Shri Pradeep S. Shirodker	From 03.10.2006 to 24.06.2008.
2.	Shri Savio Fernandes	From 24.06.2008 to 25.08.2008
3.	Shri Ulhas Y. Shet	From 26.08.2008 to 10.09.2008
4.	Shri Nileshkumar V. Sawant	From 10.09.2008 till date.

The R.T.I. Application is dated 17.12.2008. Therefore as far as R.T.I. Application is concerned the material P.I.O. is Shri Nileshkumar V. Sawant only. And delay if any as far as R.T.I. Application is concerned is only Nileshkumar and not any other P.I.O. as they were not there at the relevant time.

Regarding letter dated 19.03.2008; the same has been outwards during the tenure of Pradip S. Shirodker. The inspection report dated 13.08.2008 is during the tenure of Savio Fernandes.

8. Now I shall refer to the other part of the Order regarding conducting of inquiry.

In para 4 of the Order dated 06.08.2009 it is observed as under:-

“For all purposes the information sought by the Appellant requiring this inspection report was not provided. The question whether the inspection which was carried on 13.08.2008 either the inspection report was not prepared or deliberately denied to the Appellant is required to be dealt by an inquiry which will have to be conducted for the purpose of fixing the responsibility and imposition of penalties.”

Accordingly it was ordered that the B.D.O., Ponda to hold inquiry in respect of inspection report dated 13.08.2008 and 19.03.2008 as mentioned in the para 1 hereinabove.

The Block Development Officer, Ponda-Goa conducted inquiry in pursuance of the said Order. The report is produced and the same is on record. I have carefully gone through the report. Based on the submission of Savio Fernandes it is found that no inspection was conducted as there was some urgent work for Sarpanch of V.P. Bhoma Adcolna and as such the inspection was cancelled therefore no reports. The B.D.O. observed:- “It is, therefore, clear that the letter has gone missing during the tenure of Shri Pradip S. Shirodker and it should have been the responsibility of Shri Pradip S. Shirodker to lodge necessary F.I.R. to the police station concerned and should have retained the copy of F.I.R.”

Again it is observed in the report:-

“During the course of inspection the copy of inspection report 13.08.2008 and notice on 19.03.2008 could not be found as they are not available into the records of the Panchayats. As regards to fixing the responsibility on the Authority responsible for not providing the information it is therefore submitted that Shri Pradeep S. Shirodker is responsible for missing documents that is letter dated 19.03.2008.”

9. The B.D.O., as per the report, holds Shri Pradip S. Shirodker responsible for missing documents that is letter dated 19.03.2008.

Since he has been held guilty he is to be dealt with in accordance with law.

10. Regarding compensation. The Hon'ble Information Commissioner has also mentioned about compensation. I am aware that powers of the Commission in awarding compensation are limited, however, in the factual backdrop of this case some compensation is to be provided to the Appellant. There is no fixed rule for calculation of quantum under the Act. In any case a sum of Rs.3000/- be paid to the Appellant as compensation. The compensation to be paid directly to the Appellant within 30 days from the receipt of the order.

11. In view of all the above I pass the following Order:-

ORDER

The Director of Panchayat is hereby requested to take further necessary action in accordance with law based on the report of P.I.O. and report compliance.

A sum of Rs.3000/- be paid by the Village Panchayat of Bhoma-Adcolna, Bhoma, Ponda-Goa/Public Authority to the Complainant within 30 days from the receipt of the Order. This amount to be paid from the funds of Village Panchayat of Bhoma-Adcolna, Bhoma, Ponda-Goa/Public Authority.

A copy of the Order be sent to the Director of Panchayats, Directorate of Panchayats, Panaji-Goa.

The penalty proceedings are accordingly disposed off.

Pronounced in the Commission on this 24th day of October, 2011.

Sd/-
(M. S. Keny)
State Chief Information Commissioner

