

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Penalty No. 53/2023

In

Appeal No. 148/2023/SIC

Shri. Jawaharlal T. Shetye,
H. No. 35/A, Ward No. 11,
Khorlim, Mapusa-Goa 403507.

-----Appellant

v/s

1. The Public Information Officer,
The Head Clerk (Rajendra Bagkar),
Mapusa Municipal Council,
Mapusa-Goa 403507.

2. The First Appellate Authority,
The Chief Officer (Amitesh Shirvoikar),
Mapusa Municipal Council,
Mapusa-Goa 403507.

----Respondents

Relevant dates emerging from penalty proceeding:

Order passed in Appeal No. 148/2023/SIC	: 25/09/2023
Show cause notice issued to PIO	: 05/10/2023
Beginning of penalty proceeding	: 23/10/2023
Decided on	: 15/01/2024

ORDER

1. The penalty proceeding against Respondent Public Information Officer (PIO), Shri. Rajendra Bagkar, Head Clerk, Mapusa Municipal Council has been initiated vide Show Cause Notice dated 05/10/2023, issued under Section 20 (1) and 20 (2) of the Right to Information Act, 2005 (hereinafter referred to as the “Act”), for not furnishing complete information and not adhering to the direction of the appellate authorities.
2. The complete details of this case are discussed in the order dated 25/09/2023, 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 25/09/2023. It was concluded that the PIO has failed to provide information as sought by the appellant and the said failure amounts to contravention of Section 7 (1) of the Act. The Commission found that the PIO, firstly failed to respond to the application within 30 days, later failed to comply with the order of the FAA. Thereafter, the PIO was granted opportunities to furnish the information during the appeal proceeding before the Commission, wherein he once again failed.
5. In the background of the facts as mentioned above, the Commission held that, such irresponsible and stubborn conduct of the PIO is not acceptable, and the PIO was issued Show Cause Notice under Section 20 (1) and / or 20 (2) of the Act, seeking his reply as to why penalty as provided should not be imposed against him.
6. Penalty proceeding was initiated against Shri. Rajendra Bagkar, the then PIO of Mapusa Municipal Council. The Commission notes that the PIO did not attend the proceeding, nor filed any reply justifying his action, inspite of multiple opportunities provided to him for appearance. Thus, the PIO has failed to furnish the information and also to submit explanation for his failure. No leniency can be shown to such irresponsible conduct and disrespect to the Act. Thus, the Commission is of the firm opinion that the guilty PIO is required to be punished under the Act, since, he has shown no respect to the Act and the provisions and authorities constituted under the Act.
7. 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."

8. The Honourable High Court of Delhi in Writ Petition (c) 3845/2007; Mujibur Rehman V/s Central Information Commission, while mentioning the order of Commission of imposing penalty on PIO has held:-

"Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public"

authorities or their officers. It is to ensure these ends that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy.”

9. In another matter, the Hon'ble High Court of Gujarat in Special Civil Application no. 8376 of 2010 in the case of Urmish M. Patel v/s. State of Gujarat has held that penalty can be imposed on PIO if first appellate authority's order is not complied. In yet another matter, the Hon'ble High Court of Bombay at Goa, in Writ Petition No. 304/2011, Johnson V. Fernandes v/s. Goa State Information Commission has dismissed the appeal of the PIO by upholding the order of the Commission, imposing penalty for his failure to supply information within the stipulated period.
10. In the background of the findings of the Commission and subscribing to the ratio laid down by the Hon'ble High Courts in the above mentioned judgments, PIO in the present matter is held guilty of contravention of Section 7 (1) of the Act, for not complying with the direction of the FAA and the Commission. Thus, the Commission is completely convinced and is of the firm opinion that this is a fit case for imposing penalty under Section 20 (1) of the Act against the PIO.
11. Hence, the Commission passes the following order:-
 - a) Shri. Rajendra Bagkar, the then PIO, Mapusa Municipal Council shall pay Rs. 6,000/- (Rupees Six Thousand only) as penalty for contravention of Section 7 (1) of the Act and for not complying with the order of the FAA and the Commission, in the specified time frame.
 - b) Aforesaid amount of penalty shall be deducted from the salary of PIO and the amount shall be credited to the Government treasury.

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