

**GOA STATE INFORMATION COMMISSION**  
 'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

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Penalty No. 02/2014  
In  
Appeal No. 118/SCIC/2013

**Shri Kashinath Shetye,**  
**R/o. 102, Raj Excellency, Patto,**  
**Ribandar, Tiswadi-Goa**

**..... Complainant**

**V/s**

**Shri R. N. Bhat,**  
**Then Executive Engineer (Training)/**  
 Public Information Officer,  
 (05/09/2012 to 31/10/2013)  
 O/o. Chief Electrical Engineer,  
 Electricity Department, Vidyut,  
 Bhavan, Panaji-Goa  
**Presently posted in Division-VII,**  
 Electricity Department  
**Curcholem -Goa**

**.....Opponent**

**CORAM:**

**Smt. Pratima K. Vernekar,** State Information Commissioner

**Decided on: 31/10/2017**

**ORDER**

1. This Commission , vide order dated 23/07/2014, while disposing the above appeal, had directed the Respondent no.1 , being then PIO to show cause as to why penal action as contemplated u/s 20 of the Right to Information Act,2005 should not be initiated against him for not responding the application of the appellant filed under section 6 of the RTI Act,2005 , within stipulated time of thirty days . In view of the said order passed by this commission, on 23/07/14 the proceedings stood converted into penalty proceedings .

2. The showcause notice were issued to then PIO Shri R.N. Bhat on 10/11/14 by my predecessor. After appointment of this Commission, fresh notice were issued to then PIO on 13/9/17. In pursuant to the notice, the then PIO Shri R.N. appeared and filed his reply on 10/11/17.
3. Vide said reply PIO has contended that on receipt of the RTI Application dated 6/3/13, he vide letter dated 7/3/13 transferred the said application to Dy. Director (Administration) as he was custodian of the said information. Vide said letter it was directed to furnish the information directly to the applicant. He further contended that the Dy. Director being deemed PIO did not furnished any information to the appellant even after the expiry of 30 days. He further contended that in compliance to the order of the first appellate authority dated 7/6/13, he again made letter on 18/6/13 to the Deputy Director(Admn) of the office of the Chief Electrical Engineer for providing the said information as the respondent no. 2 FAA had directed to provide the information to the appellant on or before 26/6/13 . It is his further contention that the information came to be furnished to the appellant on 20/6/2013 by Dy. Director (Admn.) and by him on 28/6/2013. The letter dated 7/3/2013,18/6/2013 addressed to Deputy Director (Admn.) by PIO were enclosed to the reply so also the forwarding letter dated 20/6/2013 addressed to the appellant by Deputy Director (Admn) and letter dated 28/6/2013 addressed to the appellant by the Respondent PIO were relied upon in support of the above contention .
4. In the nutshell it is the case of the then PIO that there was no willful intention on his part to refuse the information and that

he has acted bonafidely in discharging his duties under the RTI Act . Whatever the delay in furnishing the information was caused due to the fault on the part of the Deputy Director (Admn) who was the custodian of the said information.

5. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005 the Hon'ble High court of Bombay , Goa bench at Panaji in writ petition No.205/2007 ; shri A A Parulekar v/s Goa State information commission has observed

“The order of penalty for failure to take action under the criminal law. It is necessary to ensure that the failure to supply information is either **intentional or deliberate**”.

4. In the back ground of above ratio laid down by the Hon'ble High Court, the point arises for my determination is
  - a)Whether the information sought was deliberate and intentionally denied to him.
5. The PIO has tried to justify the reason for not responding the application of the appellant within 30 days. According to him the information was not placed before him by the Deputy Director (Admn) as such he could not furnish the information within time.
6. On perusal of the letter dated 11/6/2013 addressed by Deputy Director (Admn) to PIO, one could gather that the same was made in reply to the letter of then PIO bearing reference NO. CEE/Tech/SPIO/RTI/433/9588 dated 7/3/2013. In other words it could be said that information is furnished for the first time to the then PIO only on 11/6/2013 despite of letter made earlier by PIO on 7/3/2013. As such I have got no

hesitation in believing the contention of the then PIO that the delay caused is not due to his fault. Based on the letter relied by the PIO I find that the PIO has acted diligently while performing his duties under the RTI Act.

7. The Hon'ble Delhi, High Court in case Registrar of Companies and others V/s Dharmendra Kumar Gard and Another's writ petition (C)11271/09 has held that ;

"The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, threat the personal penalty on the PIO can be imposed. This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity.** Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute."

8. Yet in another decision the Hon'ble High Court of Bombay at Goa in writ petition No. 704/12 public authority V/s Yashwant Sawant has held that at para 6;

“ The imposition of such penalty is a blot upon the career of the Officer at least to some extent ,in any case the information ultimately furnished though after some marginal delay in such circumstances , therefore, no Penalty ought to have been imposed upon the PIO”.

9. The Honble high court of Punjab and Haryana at Chandigarh in civil w. p. No.6504 of 2009 ; State of Punjab v/s State Information Commissioner has held at para 3

“The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and no hold up information which a person seeks 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 . if there had been a delay of a year and if there was a superintendent, who was prodding the Public Information officer to act, that it self should be seen a circumstance where the Government authorities seemed reasonably aware of the compulsions of time and the imperatives of providing information without any delay. The second Respondents has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified”.

10. By applying the above ratios laid down by the various High Courts I find that there is no cogent and convincing evidence on record to show that the delay in furnishing the information was purposive . On a contrary the explanation given by the PIO appears to be convincing and probable as the same is supported by documentary evidence . In the above given circumstances I am of the opinion that PIO cannot be made

scapegoats for the fault of the third person as he was not the custodian of the said information .

11. Considering the fact of the case I find the explanation given by the PIO is convincing and probable. I find no grounds to hold that information was intentionally and deliberately not provided to the appellant on a false ground by the then PIO.
12. In the above given Circumstances I find that the levy of penalty is not warranted in the facts of the present case. Consequently showcause notice issued on 10/11/14 & 13/09/2017 stands withdrawn.

Proceedings stands closed

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/-

**(Ms.Pratima K. Vernekar)**  
State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa

Ak/-

