

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

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

**Penalty 16/2017
In Appeal No. 138/2016**

**Nigel Gonsalves,
Sorab House,
Khambatta Lane,
Opposite VJ BU PO By Culla(E)
Mumbai.**

...Appellant

V/s.

**The Public Information Officer (PIO),
The Asst. Registrar of Co-operative Societies & SDIO
North Zone,
Mapusa-Goa**

....Respondent

Decided on: 12/06/2017

ORDER

1. While disposing the appeal No. 138/2016, by an order dated 20/02/2017, this Commission directed to issue showcause notice to Respondent Public Information Officer (PIO) as to why the penal action should not be taken against him for not responding application under section 6(1) of Right To Information Act, 2005 within time and for not furnishing the information and also sought reply from PIO.
2. In pursuant to the order of this Commission showcause notice was issued to the Respondent PIO on 7/03/2017
3. In pursuant to the notice the then PIO Avit Naik was present who filed his reply to showcause notice on 20/04/2017. Also additional reply came to be filed to showcause notice on 3/05/2017 thereby enclosing the letter dated 9/03/2017 by which the information was furnished to

the appellant and acknowledgement of the appellant having receiving the same on 24/03/2017.

4. The then PIO also filed his written synopsis on 18/05/2017 and submitted that his reply and his written synopsis to the showcase notice may be treated as his arguments. The Respondent have contended that the appellant in his application under section 6(1) had sought for the information to be furnished to him in person and not by post. He further submitted that the Respondent PIO has waited for personal response from the appellant as the appellant has also sought for inspection of the certain files.
5. It is further case of the Respondent that Appellant has responded in person only on 1/03/2016. He further submitted that information sought by the appellant vide point number 2(b) could not be furnished to him in time as the same was not submitted to the Office of the Respondent PIO by the said Society and as such the same was not found in the office record. It is further contended that the said fact was orally informed to the Appellant during his personal visit to their Office. As such he contended that there was no refusal to provide information to the appellant. It is his further contention that as per direction issued by this Commission. Information sought under point 2(b) is already procured from the concern society and accordingly copies of the same is provided to the Appellant on 24/03/2017. It was further contended that he was holding additional charge of Assistant Registrar of Cooperative Societies etc. and therefore he was not in position to settle the issue at early date. It is his further case that under cooperative societies Act 2001 there are no penal provision against non submission of rectification report in form M by Housing Cooperative Society and the audit of such societies is done by the Chartered Accountants.
6. In the nutshell it is case of the Respondent that he could not furnish information at point No. 2(b) as the same was not available in the office records since the same was not submitted by the said Society.

7. The appellant during the hearing in the appeal proceedings have submitted that he has carried out inspection concerning the said files. Grievance of the appellant was only concerning the information at point No. 2(b) being not furnished to him by then the Respondent PIO.

8. As per section 2(f) of Right to Information Act "information" means any , material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being *in force*;

and

Section 2(j) of the act gives the extent of right to the seeker as under:

2(j) right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

A conjoint reading of these provisions shows that a seeker can exercise his rights in the form and manner as specifies in section 2(j) in respect of the records as specified in section 2(f)

9. By resorting to the said provision of the RTI Act Respondent PIO ought to have sought the said information from the respective Housing Society. However, since now the information is provided to the appellant in compliance of the order of this Commission no intervention is required as far as information is considered.

10. The Respondent PIO is only the custodian of the information to be posted to the appellant seeker only if the Public authority has the information. He as being the designated as PIO is required to furnish the same to the

Public. The PIO cannot be called upon to create information for being furnished. The information at point No. 2 (b) was not in existence and/ or not submitted by the said Society to the Public Authority as such where the information sought is not part of the records of the public authority, the PIO cannot be held responsible for not furnishing the same.

11. I am satisfied and convince by the justification given by then PIO. No case made out to hold that the delay in furnishing the information at point No. 2 (b) is malafide and intentional.

12. Hon'ble High Court at Bombay at Goa Bench at Panaji in case of Shri A. A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007) has observed:

"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."

13. **yet in another case i.e. (Writ Petition No. 11271/2009) reported in Delhi High Court in case of Registrar of Companies and Others V/s Dharmendra Kumar Garg and Anothers 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."

14. The High court of Punjab and Haryana at Chandigarh in Writ Petition No. 6504 of 2009; State of Punjab and others V/s State Information Commission Punjab has held at para 3:-

"The penalty provisions under section 20 is only to sesitize the public authorities that they should act with all due alacrity and not 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 whether the explanation is acceptable or not. If there had been a delay of a year and if there was superintendent, who was prodding the Public Information Officer to Act, that is 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 2nd respondent has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified.

15. Applying the same ratio I am of the opinion that this is not the fit case warranting for imposing penalty. As such showcause notice issued on 7/03/2017 stands withdrawn.

In the result 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.

Pronounced in the open court.

Sd/-

(Ms.Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa

Kk/-