

**GOA STATE INFORMATION COMMISSION**

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

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Penalty 32/2017  
In Appeal 123/SIC/2014

Nishant G.Sawant,  
Mahalaxmi Bandoda ,  
H.No. 1188,  
Ponda Goa.

..... Appellant

**V/s.**

1. Public Information Officer  
Executive Engineer,  
PWD, W.D. XVIII(Road),  
Ponda Goa.
2. First Appellate Authority,  
The Suptd. Surveyor of ,  
Public Works Department,  
Altinho panaji Goa

**CORAM:**

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

**Decided on: 06/09/2017**

**ORDER**

1. This commission by an order dated 15/5/17, while disposing the above appeal had directed the Respondent no. 1 PIO to provide the information to the appellant free of cost as sought by him vide his application dated 13/5/14 and also had directed the respondent PIO , to showcause as to why cost / fine and disciplinary proceedings should not be initiated against him for dereliction of duties. A showcause notice also issued to him seeking reply from the Respondent PIO why he should not be made to compensate the appellant for the inconvenience, hardship and mental agony cause to him. In view of the said order passed by this commission, on 15/5/17, the proceedings stood converted into penalty proceedings.
2. Showcause notice dated 25/5/17 was issued to Respondent NO. 1 PIO. The respondent PIO was represented by Advocate Atish Mandrekar who filed his reply on 5/7/2017. The copy of the reply

alongwith enclosure were furnished to the appellant who was present for hearing. The appellant showed his desire to file his written synopsis. Despite of giving him opportunities the same was not filed by the appellant. As such I hold that the appellant has no reply to be filed and averments made in reply to show cause notice by PIO are not disputed.

3. Arguments advanced by the Advocate Atish Mandrekar on behalf of respondent PIO. It is submitted on behalf of PIO that in compliance of the order of this commission the information came to be furnished to the appellant free of cost vide covering letter dated 29/5/17. In support of said contention Exhibit 1 and 2 has relied by PIO showing that it is duly acknowledged/received by the appellant. During the proceedings since the appellant have not come out with any grievance with regards to information furnished to him I hold that the information furnished to him in compliance to the order of this commission is as per his requirement.
4. It was further submitted by the Advocate for the Respondent that appellant has suppressed some of the documents i.e the replies and letters of the PIOs addressed to appellant and had not deliberately relied the same in the second appeal with ulterior motive . It was further contended that Respondent vide their letter dated 22/5/14 requested the appellant collect the available information sought on payment of Rs. 56 as a cost towards Xerox which was sent by the ordinary post. It is their further case of the Respondent PIO that instead of collecting the information after due payment of Xerox charges, preferred first appeal alleging that information is not received by him. It is their further case the appellant made false allegations vide letter dated 22/8/14 which was denied by Respondent PIO vide letter dated 26/8/14. It is further case that vide said letter PIO again requested to make the payment and to collect the information but the appellant continue to inward such false letters intentionally for creating false records. It is further case of the Respondent that vide their letters dated

29/10/14 , 11/11/14, 12/11/14 and 4/12/14 again requested the appellant to collect the information after payment of Rs. 56/-. It is their further case of PIO that there was no delay in responding the application nor there was any denial of information and that respondent PIO have no were shown any discrimination or refusal to furnish the information to the appellant. The Respondent PIO have relied upon the above letters issued by him to the appellant in support of their contention.

5. Advocate Atish Mandrekar in a nutshell submitted that considering the facts as are pleaded and supported by documents there is no malafide on the part of PIO nor he delayed or avoided in furnishing information but it had always been volunteers by the PIO but the appellant failed to availed the same.
6. I have considered the arguments advanced by Advocate for Respondent and the replies and various correspondence exchange between them. It is seen from the records that the letters of the PIOs were not enclosed to the memo of appeal by the appellant. The appellant has not filed any counter reply disputing and rebutting the same as such I have no any reasons to disbelieve the Respondent PIO.
7. The point required to be decided by the commission is whether the delay in providing the information was purposive on the part of the PIO
8. The 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.”

At para 11 further also held that:-

“unless and until it is borne on record that any office against whom order of penalty for failure to be sought to be levied

and has occasion to comply with a order , and has no explanation or excuse available worth satisfying the forum, possessing the knowledge of the order to supply information, and order of penalty cannot be levied”.

9. It is the contention of the appellant that there was deliberate delay caused by the PIO and it is on the basis of this allegation that the appellant has sought the penalty. Being so the burden to prove that there were malafides in delaying the information lies on the appellant .
10. The letters relied by the Respondent PIO in reply to showcause notice is undisputed by the appellant. It is seen from the records that the application of the appellant has been duly replied within time so also after the order of First Appellate Authority the Respondent have repeatedly requested the appellant to deposit the fees and to collect the information. Further the order of this commission has been duly complied by the Respondent PIO. From the entire records it appears that appellant himself has caused delay in receiving the said information.
11. If one applies the ratio of the decision of Hon'ble High Court in the case of A.A. Parulekar V/s Goa State Information Commission (Supra) the appellant has failed to show the delay in furnishing the information was intentional and deliberate . on the contrary from the records it appears that the appellant had delay receiving the information when offered .
12. Yet in another case The Delhi High Court writ petition (C)11271/09; in case of Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's 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, that 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."

13. The High Court of Judicature at Bombay Nagpur Branch in letters patents in appeal No. 276/12- State Information Commissioners V/s Tushar Manlekar has held

" it is really surprising that a thousands of documents are being sought by the Respondents from the authorities and non of the documents is brought into use . We are clearly of the view in the aforesaid backdrop that the application was filed with malafide intention and with a view to abuse the process of law ."

It is further held that " Since the part of the order in appeal has been already complied with and the appellant has supplied the necessary information free of cost , we set aside a order imposing the cost on the PIO".

Further held that

"Considering the facts of the case I find the explanation given by the PIO is convincing and probable and I finds no grounds to hold that delay in dispensing the information was intentional or deliberate ."

14. Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another, it has been held

“The penalty provisions under section 20 is only to sensitize 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 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 year and if there was a superintendent, who was prodding the public information officer to act, that itself 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 2<sup>nd</sup> 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. In the present case, record shows that PIO was diligent in responding the application of the complainant as required u/s 7 of the RTI act. Bonafides have been shown by the PIO even offered to furnish available information to the Appellant after due payments are made by him. PIO has also specified the amount of fees required to be paid for the said information. There is nothing placed on record by Appellant that he has paid the necessary fees and collected the information and that said was incorrect or incomplete or that PIO has refused to provide him correct information despite of due payment. Secondly the PIO after the order of FAA had also intimated him to collect the information after due payments are made by Appellant. I find the explanation given by PIO is convincing and probable as the same is relied by supporting documents

16. In the above back ground the commission observed that the respondent had shown his bonafide in furnishing the information and that there is no intentional or deliberate attempt for malafide

intention in not furnishing the information in time nor complying with order of first appellate authorities. Based on the above circumstances such this commission comes to the conclusion that levy of penalty on the Respondent PIO is not warranted in the present proceedings.

17. In the result Showcause notice dated 25/5/17 issued by this commission 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.

Pronounced in the open court.

Sd/-

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

Ak/-

To