

# GOA STATE INFORMATION COMMISSION

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

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Penalty No. 10/2018

In

Appeal No.164/2017

Engineer Rabindra A.L.Dias,  
Dr. Pires Colony, Block "B",  
Cujira St.Cruz, Tiswadi Goa.

..... Appellant

**V/s.**

1. Public Information officer,  
O/o the Village Panchayat of St.Cruz,  
St.Cruz Tiswadi Goa.
2. First Appellate Authority,  
O/o the Block Development Officer,  
6<sup>th</sup> floor, Junta House,  
Panaji Goa.

..... Respondent

**CORAM:**

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

**Decided on: 06/03/2018**

## **ORDER**

1. This Commission , vide order dated 9/2/2018, while disposing the above appeal, had directed the Respondent no.1 , being then PIO to show cause as to why penalty and disciplinary proceedings should not be initiated against him for not replying the application of the appellant within stipulated time as contemplated under the RTI Act .
2. In view of the said order passed by this commission, on 9/2/2018 the proceedings stood converted into penalty proceedings.
3. The showcause notice were issued to the PIO on 14/2/2018. In pursuant to the notice the PIO Shri Hanumant Borkar appeared and filed his reply to show cause notice on 6/3/2018 alongwith enclosures.

4. The copy of the same was furnished to the appellant .
5. Arguments of both the parties heard.
6. 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 akin action under the criminal law . It is necessary to ensure that the failure to supply information is either intentional or deliberate.”

7. In the back ground of above ratio is laid down by the Hon'ble High Court, the point arises for my determination is
  - a)Whether the delay in furnishing information was deliberate and intentionally?.
8. The PIO vide his reply dated 6/3/2018 have contended that three different applications dated 15/4/2017 was filed by the appellant under the RTI Act which were inwards by inward No. 145,151 and 152.
9. It is his further contention that the he was on leave for 18 days during the relevant time when the above RTI applications were submitted in the Panchayat .
10. It is his further contention that the appellant has filed letter on 15/4/2017 withdrawing his application which was inwards vide inward No. 151 and then PIO who was holding the charge of the Panchayat during the relevant period, by inadvertence made the remark on the present RTI Application that the applicant has withdrawn the application, as such it is his contention that he was under bonafide impression that the applicant had

withdrawn the present RTI application and as such did not take any step to process the said RTI application.

11. In the nutshell it is the contention of the Respondent that there was no willful intention on his part to refuse the information and that he have acted bonafidely in discharging his duties under the RTI Act and delay if any on providing information was on a account of the reasons stated above. The respondent have also relied upon the documents in support of his above contention.
12. The Delhi High court in writ petition © 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 cases of malafides or unreasonable 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 PIO's 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 PIO's 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. Considering the ratio laid down in above case and also in case of Shri A.A. Parulekar(Supra) ,the explanation given by the PIO appears to be convincing and probable , as such I hold that there are no grounds to hold that information was intentionally and deliberately not provided to him.
14. In the above given circumstances and for the reasons discussed above I am of the opinion that this is not a fit case warranting penalty on the PIO. Consequently showcause notice dated 14/2/2018 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/-