

**GOA STATE INFORMATION COMMISSION**  
Kamat Tower, Seventh Floor, Patto Panaji-Goa

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Penalty 48/2018

In

Appeal No. 212/2018/SIC-I

Shri Subhash G. Narvekar,  
R/o. H.No.164, V "Ganesh"  
Alto Duler, Mapusa,  
Bardez Goa-402507

....Appellant

V/s

1) The Public Information Officer,  
Administrator of Devalaya of Bardez,  
Mapusa-Bardez,  
Goa-402507

2) First Appellate Authority,  
Dy. Collector & S.D.O.,  
Mapusa-Bardez,  
Goa-402507.

.....Respondents

**CORAM:**

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

**Decided on: 26/11/2018**

**ORDER**

1. This Commission Vide order dated 17/10/2018 had directed to PIO to comply the order passed by the FAA dated 31/7/2018 also to provide complete information to the appellant as sought by him vide his application dated 3/4/2018 . Vide said order also this commission directed PIO to showcause as to why penal action as contemplated u/s 20(1) and 20(2) of the Right to Information act 2005 should not be initiated against him or her for not responding the application within 30 days of time as contemplated under section 7(1)of RTI Act 2005 and for not complying the order passed by Respondent no.2 first appellate authority and for delay in furnishing the information .
2. In view of said order passed by this Commission on 17/10/2018, the proceedings should converted into penalty proceedings .

3. In pursuant to the said order showcause notice was issued to then PIO on 22/10/2018 and on 8/11/2018. No specific names of erring PIO's were provided by the appellant to this commission.
4. Despite of due service of notice appellant opted to remain absent. Then PIO Shri Sandeep Gawade and the present PIO Shri Laxmikant B. Kuttikar appeared and filed their respective replies on 22/11/2018 alongwith supporting documents. The copy of the same could not be furnished to the appellant on account of his absence. Compliance report also came to be filed by present PIO Shri Laxmikant Kuttikar on 26/11/2018 of having complied commission order.
5. Oral arguments of the respondent were heard.
6. Respondent then PIO Shri Sandeep Gawade admitted of having received the application of the appellant dated 3/4/2018 so also fairly admitted the delay in responding the same. However it is the case of the PIO that the same was not intentional. It was contended that when the application was received Shri Dasharath Gawas was officiating as PIO and since he proceeded for training for the period from 9/4/2018 to 18/6/2018, he was given his additional charge of Mamlatdar of Bardez besides his main charge as Joint Mamlatdar-I and Joint Mamlatdar VI and he had assumed to his additional duty in pursuant to the Personnel department order No.15/18/2003/PER(part-I)/1067dated 6/4/2018.

It was further contended that he was holding 3 different court at the same time, and was handing administrative work , law and orders duties, Drugs Sampling under NDPS Act, Inspections of illegal constructions and other works, and the process of continuous updation of claims and objection under representation of peoples act 1950 for 04 Thivim Assembly constituency as AERO,05 Mapusa AERO and 10 Aldona as AERO also performed by him and besides this he had also visit to GMC or any other Hospitals for recording the dying declaration.

It was further contended that he after taken the charge of PIO noticed that the dealing hands had not maintained the RTI records properly and hence he was directed to sort out the application properly and to put the RTI application before him to be disposed at the earliest and accordingly the dealing hand Shri Dattaprasad Kakadkar on 18/4/2018 placed before him the present RTI application dated 3/4/2018 filed by the appellant herein .

7. It is his contention that since the information was not available in the office of PIO, he vide his letter dated 18/4/2018 requested the president /Chairmen of Shri Dev Bodgehwar Saunstan Mapusa, Bardez Goa to submit requisite information to their office as sought by the applicant within 4 days for onward submission to the information seeker. But the said Devanstan Sausthan failed to furnish the information within stipulated time hence he could not furnish the same to the information seeker in time and hence there was delay in reply .
8. It was further contended that he was constantly following the said matter with the said Devasthan and after he received some of the information, he furnished the same to the appellant on 19/6/2018.
9. In the nutshell it was the case of Respondent PIO that the information sought by the appellant was not in his custody and whatever information received from the Devasthan after repeated follow up was provided to the appellant, during the proceedings before the FAA.
10. It is his case that when the order was passed by first appellate authority on 31/7/2018 he was not officiating as PIO so also when the second appeal was filed before this commission by the appellant as he was already relieved on 19/6/2018 from the said duties.
11. The subsequent PIO Shri Laxmikant B. Kuttikar PIO vide his reply submitted that he have taken the charge of Mamlatdar Bardez/PIO

on 21/6/2018. And that he received an order dated 31/7/2018 passed by the FAA on 23/8/2018. It is his further contention that since the complete information was not available with the office of PIO, he has taken efforts to call for the information from the president of Bodgeshwar Devasthan Mapusa, vide his office letter NO.MAM/BAR/22/27 –S.N./2018/3511 dated 3/6/2018 , letter No. NO.MAM/BAR/Devasthan/RTI/2018/3576 dated 20/8/2018 and letter No. MAM/BAR/RTI/Appeal-27/18/3510 dated 24/8/2018 but the Devasthan failed to furnish him the information till date as such he is unable to furnish the same. In support of his contention he has relied upon the letters as mentioned above written to the president of the said Devasthan .

12. It is his further contention that after the order of the first appellate authority, the appellant vide letter dated 24/8/2018 was informed that information is not available in their office and as such their office has forwarded RTI application of the appellant to the president of Bodgeshwar Devasthan Mapusa, to furnish the point wise information to their office and the same shall be furnish to him after they have received the same from the said Devasthan.

It was further contended that he was holding multiple charges at the same time, along with, administrative work, law and orders, Drugs Sampling under NDPS Act, Inspections of illegal constructions and other works process of continuous updation of claims and objection under representative of peoples act 1950 for AERO,05 Mapusa and also used to visit GMC or any other Government Hospitals for recording the dying declaration.

13. In the nutshell it is the case of both the Respondent PIO that due to holding of additional charges and other administrative and other connected work as Mamlatdar and as the information was not in their custody they could not furnish the same and the said was not intentional and deliberate but due to the Genuine difficulties faced by them.

14. The present PIO filed on record an compliance report on 26/11/2018 interalia submitting that in pursuant of order of this commission they had made a letter dated on 15/11/2018 and the Devasthan have furnished them the information inwards on - 20/11/2018 which they in turn have furnish to the appellant on 22/11/2018.

15. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005:-

a. 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.**"*

b. The Delhi High Court, in 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.”

c. Yet in Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another, the Hon’ble court 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.** I 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.**”

d. Yet in another decision, the Hon’ble High Court of Punjab and Haryana, Ramesh Sharma and others v/s the State Commission and others decided on 8/2/2008. has held

“if the information is not furnished within the time specified by sub section (1) of section 7 of the Act then under sub section(1) of section 20, Public authority

failing in furnishing the requisite information could be penalised. ***It has further held that it is true that in case of intentional delay, the same provision could be invoke but in cases where there is simple delay the commission had been clothed with adequate Powers".***

16. Hence according to the said judgments penalty under sub-section (1) of the section 20 could be imposed only in the case where there is repeated failure to furnish the information and that too without any reasonable cause .
17. 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**?
18. Considering the circumstances, that they were holding three charges in additional to his original charge and other administrative of election work etc., as such he had no absolute control over the administration of the same as he had to also impart his duties as else where simultaneously. Section 7(1) of the act envisages a clear period of 30 days at the disposal of PIO to furnish or to dispense information. As PIO herein was holding additional charge the period had to be shared by him for his duties to other authorities as such he did not get complete 30 days working at the Public authority concerned herein.
19. In the present case PIO Shri Sandeep Gawade have fairly admitted of not replying within 30 days and tried to justify the reasons for not responding or not providing the information within 30 days time. It is an admitted fact the appellant had received the reply of PIO dated 19/6/2018 providing part of the information which was received by him from the concerned Devasthan . It is also admitted fact that the said reply was given by the PIO no sooner the receipt of the notice of the first appeal was received by the Respondent. The

letters are also placed on record by him in support of his contention that he had promptly made letters to the said Devasthan and tried to secure the information. The bonafides have been shown by the PIO in furnishing whatever information was received by him from the said Devasthan during the first appeal proceedings itself.

20. The present PIO Shri Laxmikant Kuttikar has also made efforts in securing the remaining information from said Devasthan after the order of first appellate authority dated 31/7/2018 and lots of correspondence was exchanged between him and the Devasthan ultimately he has succeeded in receiving the remaining available information on 20/11/2018 and the bonafides have been shown by him in providing the same on the next date itself.

21. 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”.

22. Yet in another decision the Honble High court of Bombay at Goa in writ petition No.488/11; Shivanand Salelkar v/s Goa state Information commission has held at para 5;

“The delay is not really substantial . The information was applied on 26/10/2009 and therefore the information had to be furnished by 25/11/2009.On 30/11/2009 complainant made his complaint and no sooner the petitioner received the notice of complaint, the petitioner on 15/1/10 actually furnished the information. If all such circumstances considered cumulatively and the law laid down by this court in the case of A A Parulekar (supra) is



applied, then it does appear that there was no justification for imposing penalty of Rs 6000/- against the petitioner. "

23. AIR 2009 Punjab and Haryana page 53, writ petition NO. 15288 of 2007, S.P. Arora V/s state Information Commission Haryana and others. wherein it has been held at para 8;

"The penalty can be imposed only if there is no reasonable cause for not furnishing the information within a period of 30 days. The word "reasonable" has to be examined in the manner, which a normal person would consider it to be a reasonable time the information is required to be supplied within 30 days only if the records are available with the office".

24. The ratio laid down by the above courts are squarely applicable to the facts of the present case. The information sought by the appellant was not in custody of the Respondent. Both the Respondents have taken efforts in securing the same from the said Devasthan and no sooner the same was received, was forwarded to the appellant. There was no denial from their side in providing information. There is a marginal delay in responding to the application and has tried to justify the circumstances leading to such delay.

25. I find that the replies and the explanation given by both the PIOs appears to be convincing and probable as the same are supported by documentary evidence. The appellant also miserably failed to exhibit by way of cogent and convincing evidence that the delay in furnishing the information or not responding to the application was intentional and with malafide motives by the PIO.

26. In view of ratios laid down by the various above High courts and in view of above discussion, I am of the opinion that this is not a fit case warranting levy of penalty on the above named PIOs. Consequently the show cause notice dated 22/10/2018 and

8/11/2018 issued to both the PIOs Shri Laxmikant Kuttikar and Shri Sandeep Gawade stands withdrawn.

Penalty proceedings stands closed

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Sd/-

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