

# GOA STATE INFORMATION COMMISSION

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

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Penalty No. 58/2017

In

Appeal No.177/2016

Shri Savio Suraj Victoria,  
H.No. 28 Khairijatem,  
Sanguem Goa.

..... Appellant

**V/s.**

1. Public Information Officer (PIO),  
Sanguem Muncipal Council,  
Sanguem Goa.

.....Respondent

**CORAM:**

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

**Decided on: 23/01/2018**

## **ORDER**

1. This Commission , vide order dated 20/12/2017, 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 and for not complying the order or First appellate authority. . In view of the said order passed by this commission, on 20/12/2017 the proceedings stood converted into penalty proceedings.
2. The showcause notice were issued to the PIO on 28/12/2017.In pursuant to the notice the PIO Shri Pramod Desai present alongwith Advocate Dattesh Naik and filed his reply to show cause notice on 10/1/2018 alongwith enclosures and also compliance report alongwith enclosure including postal acknowledgment receipt of the appellant.

3. The copy of the same could not be furnished to the appellant as appellant opted to remain absent for the present penalty proceedings .
4. The PIO vide his reply dated 10/1/2018 have contended that at the relevant time he was holding additional charge as Chief Officer of Quepem Municipal Council as well as Curchorem Municipal Council and also charge of BDO Sanguem for some period in addition to his original charge at Sanguem Municipal Council. He further contended that workload at Quepem and Curchorim is almost twice the workload at Sanguem. He further contended that at the relevant time there were no adequate staff deputed at Sanguem Municipal Council as such due to the excessive work load, the application filed by the appellant could not be processed forthwith.
5. It is his further contention that the said application was transferred to them by GSUDA was received by their office on 7/4/2016 and he thereafter by letter dated 6/5/2016 bearing outward No. 139 had provided the point wise information to the appellant so also after keeping the said information ready also had called upon the appellant to collect the said information after depositing the required amount. It is his contention the appellant did not attend the office not deposited the fees on the contrary filed appeal before first appellate authority. It is his further contention that before the first appellate authority they furnished him information vide letter dated 3/6/2016 as such the first appellate authority was pleased to close the first appeal.
6. It is his further contention that he was not aware about the application filed by the appellant to the first appellate authority on 14/7/2016 as well as the order dated 11/8/2016 passed by the first appellate authority as no notice of such application was

served upon him by the first appellate authority nor the order dated 11/8/2016. It is his further contention that he learnt about the said order and the application only after receipt of the notice of this commission in appeal No. 177/2016. It is specific case on account of ignorance of order dated 11/8/2016 of the first appellate authority he could not comply the same and furnish the information.

7. It is his further contention that during the present proceedings also the appellant has furnished information on 12/5/2017 and as the appellant was not satisfied with information at point No. 12,13,& 15, Respondent vide application dated 12/12/2017 once again provided him the clarification along with the documents which was by Registered A.D.
8. In the nutshell it is the contention of the Respondent that there was no willful intention on their 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 appellant himself.
9. 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.”

“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 complied 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”.

10. 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?
11. On perusal of the records it is seen that the entire defense of the PIOs is resting on the contention that he was holding many charges of different Public authorities and he was officiating in such a big office with limited staff and despite of informing the appellant to collect the information after depositing of the fees, the appellant nor deposited the fees nor collected the information. The letter dated 6/5/2016 and the outward register of the Sanguem Municipal Council, the orders of giving him additional charge of Curchorem & Quepem Municipal Council, BDO of Quepem etc. were enclosed and relied upon by the Respondent PIO.
12. In a present case the contention of the PIO Shri Pramod Dessai that he was holding main regular charge as Chief Officer of Sanguem Municipal Council and additional charge as stated above, the said fact is not disputed by the appellant herein and as the said is supported by the documentary evidence and Considering the above circumstances I find that as the PIO had charge of the public authority involved herein was in addition to his regular charges as such he had no absolute control over the administration of the same and he had to also impart his duties elsewhere simultaneously.
13. 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.”

14. 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 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.

“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 .”

15. Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another.

“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.

16. In the present case, record shows that PIO was diligent in responding the application of the appellant as required u/s 7 of the RTI act. The bonafides have been shown by the PIO in furnishing point wise replies and even offered to furnish available information to the appellant after due payments are made by complainant. There is nothing placed on record by appellant that he has paid the necessary fees and that PIO has refused to provide him correct information despite of due payment.
17. The Appellant has also alleged that incomplete, incorrect and misleading information has been provided to him and that PIO

had deliberately delayed in providing information with ulterior motive. In such a circumstance, the onus lies on the party who makes such averments to prove the same. There is no sufficient and cogent evidence placed on record by the appellant substantiating his such stands/contention. In absence of any cogent and sufficient evidence it will not be appropriate on the part of this commission to arrive and draw any such conclusions.

18. There is nothing placed on record by the appellant or first appellate authority to show that the respondent PIO was aware of the application filed by the appellant on 14/7/2016 and of the order dated 11/8/2016 passed by the first appellate authority and that he despite of aware of said order deliberately did not furnish him the information. The delay in complying the order of FAA cannot be sole ground to penalize the PIO since the order of First appellate authority was not communicated to PIO. It has to be further shown that the such lapses on the part of the PIO are persistent and done with malafides intention.
19. Considering the above ratio and also the ratio laid down in case of shri A.A. Parulekar ,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.
20. In the above given circumstances and the for the reasons discussed above I am of the opinion this is not a fit case warranting penalty on the PIO. Consequently showcause notice dated 28/12/2017 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.

Pronounced in the open court.

Sd/-

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

Ak/-