

**GOA STATE INFORMATION COMMISSION**

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty Case No.11/2014

In

**Complaint No. 615/SCIC/2010**

Smt. Noorjahan Bi,  
R/o H.No. 41, Alishan Mahal,  
Nagar Masjid, Ponda Goa

..... Complainant

**V/s.**

1. Jayant Tari,  
Then Chief Officer /  
Then Public Information Officer (PIO),  
(27/05/2009 to 16/01/2012)  
Ponda Municipal Council,  
Ponda, Goa.

.....Respondent/Opponent

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

Disposed on:-08/02/2018

**ORDER**

1. The brief facts leading to the present penalty proceedings are that the information seeker Smt Noorjahan Bi vide her application dated 7/5/10 had sought for the information from PIO of Ponda Municipal council and the PIO vide his reply dated 7/6/10 had denied/rejected him the said information u/s 8(h) of the RTI Act,2005 .
2. The Complainant being aggrieved by the said response, preferred 1<sup>st</sup> appeal before the Director of urban development at Panaji and the FAA by an order dated 2<sup>nd</sup> July 2010 directed the PIO to make the information available to the appellant .The said order was challenged by the opponent PIO before this commission which was dismissed by the commission by its order 9/11/12 .
3. Since despite of dismissal of the appeal filed by the PIO challenging the order of FAA, as PIO did not furnish him the information, the

complainant being aggrieved by the action of PIO approached this commission by way of complaint bearing No.615/2010.

4. The Commission disposed the said complaint vide order dated 28/9/11 thereby directing PIO/opponent to furnish the information to item No.(C). In other words the commission had directed PIO to inform to the appellant whether all the fixed deposit amounts shown in the receipt are reflected in the cash book within 15 days of from the receipt of the order and he was directed to report compliance
5. My predecessor vide order dated 7/1/14 passed in the Roznama sheet came to the findings that order of the commission dated 28/9/11 was not complied by the PIO/opponent and the information is not supplied till 7/1/14 and as such ordered to issue notice u/s 20(1) of the RTI act.
6. Accordingly show cause notice was issued by my predecessor to shri Jayant Tari on 29 /5/2014 to which reply came to be filed by him on 6/8/14 and on 11/11/14 Since the penalty proceedings were not finally disposed, after appointment of this commission once again fresh showcause notices u/s (1) and (2) were issued by this commission on 12/9/2017 and 9/10/2017 .
7. The complainant filed application on 26/12/2017 thereby praying to take a lenient view against Respondent and to pardon PIO.
8. Shri Jayant Tari appeared and filed his additional reply on 25/1/2018. The copy of the same could not be furnished to the complainant on account of her absence .
9. Vide both the replies the opponent contended that compliance report was filed to the commission on 18/11/2011 and that all documents were furnished to the complainant. It further contended that since the complainant obtained the copies of the fixed deposit receipt and the copies of cash book it is for the

complainant to form his own opinion based on the documents furnished to him. It was further contended commissions order dated 28/9/11 is bad in law as the powers of the commissioner under the provisions of the Act does not extend to direct public authority to furnish information which is not contemplated u/s 2 and 3 of the Act. It was further contended that the commission has not taken into account his compliance report and exercised jurisdiction beyond the power vested to the commission under the provisions of the Act. It was further contended that commissioner has given direction in the said order which are not executable and PIO has no obligation to comply. It was further contended that he was holding additional charge as chief officer during the relevant time apart from his regular duty as Dy. Collector and SDM Ponda and additionally, member secretary of Rajiv Gandhi Kala Mandir Ponda and as such was overloaded and burdened with his duties, he could not make it to PMC. It was further contended that the information sought was voluminous and was relating to years 1988,1996, 2003,2010 as such it took few days to compile the material. It is further contended that the complainants representative by name Mulla A Mujavar collected the information on 1/2/2011. It is his further contention that the order of the commission directing him to furnishing the information in complaint was null and void. It was further contended the FIR has been lodged by him with the Police station against the late Husband of the complaint with the charges with Miss appropriation of the funds of Ponda Municipal Council and as such the complainant got grudge against him and has been filing various application /complaints .

10. Arguments of the Respondent heard .
11. *On scrutiny of the records it is seen that the present complaint was filed by the complainant seeking prayer for information and also for penalty.*

12. The Hon'ble Apex Court in the case of ***Chief Information Commissioner and another v/s State of Manipur and another (civil Appeal No. 10787-10788 of 2011)*** has observed at para (35) thereof as under:

*"Therefore, the procedure contemplated under [Section 18](#) and [Section 19](#) of the said Act is substantially different. The nature of the power under [Section 18](#) is supervisory in character whereas the procedure under [Section 19](#) is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under [Section 19](#). This Court is, therefore, of the opinion that [Section 7](#) read with [Section 19](#) provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through [Section 18](#) is contrary to the express provision of [Section 19](#) of the Act. It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in *Taylor v. Taylor* [(1876)1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden."*

The rationale behind these observation of apex court is contained in para (37) of the said Judgment in following words.

*“ 37. We are of the view that section 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies, one cannot be substitute for the other.”*

13. The High Court of Karnataka At Bangalore in writ Petition No. 19441/2012 and Writ Petition Numbers 22981 to 22982/2012 C/W Writ Petition No. 24210/2012 and Writ Petition Numbers 40995 to 40998/2012 (GM-RES) Between M/s Bangalore Electricity Supply Company Limited. V/s. State Information Commissioner, Karnataka information Commission. has held that;

*“information Commissioner has got no powers under section 18 to provide access to the information which has been requested for by any person and which has been denied and that the remedy available would be to file an Appeal as provided under section 19 of the RTI Act”.*

14. It appears that my predecessor has lost the sight of above ratio of Hon’ble Supreme Court and High Court.
15. Never the less, it is not in dispute that PIO has furnished to the complainant the copies of the fixed deposits receipts and copies of cashbooks. Though the order dated 28/9/2011 directs the PIO to inform the complainant “ where are all the fixed deposits amount shown in the receipts are reflected in the cash book “., such an directions would be contrary to the definition of information under the Act. It appears that the order dated 28/9/2011 is per-incuriam vis-a-vis the judgments passed by the various courts.
16. In the contest of the nature of information that can be sought from PIO the Hon’ble Supreme Court in case of in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been held at para 35

“At this juncture, it is necessary to clear some misconception about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from the

combined reading of section 3 and the definition of “information” and “right to information” under clause (f) and (j) of section 2 of the Act. If the public authority has any information in the form of data or analysed data or abstracts or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act”.

17. Yet in another decision Hon’ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s. The Goa State Information Commission and another, reported in 2008(110)Bombay L.R.1238 at relevant para 8 has held**

“ The definition of information cannot include within its fold answers to the question why which would be same thing as asking a reason for a Justification for a particular thing, The Public information authorities cannot be expected to communicate to the citizens the reasons why a certain thing was done or not done in the sence of justification because the citizen makes a requisition about information justifications are matters within the domain of adjudicating authorities and cannot properly be classified as information”.

18. The Apex court in case of peoples Union for Civil Liberties V/s Union of India AIR Supreme Court 1442 has held

“under the provisions of RTI Act of Public Authority is having an obligation to provide such information which is recorded and stored but not thinking process which transpired in the mind of authority which an passed an order”.

19. In the light of the above ratio what could have been complied by the PIO is only furnishing of F.D. receipt and the copies of cashbook leaving it to the complainant to verify whether they are reflected or not. Such compliance having being fulfilled I find that notice dated 29/5/2014 was redundant. I find no malafide intention on the part of PIO in furnishing information and I hold that the order dated 28/9/2011 was already complied to the extent to which it could be complied prior to the said order and hence I find no grounds to proceed with the said notice.

In the above given circumstances I pass following order.

**Order**

Showcause notice dated 29/5/14, 12/9/2017 and 9/10/2017 issued to then PIO stands withdrawn.

Pronounced in open proceedings. 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.

Sd/-

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