

**GOA STATE INFORMATION COMMISSION**  
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

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**Penalty 12/2018**  
**In**  
**Appeal No.140/2015**

Anil Govind Naik,  
2/G-3, Dukle Residency,  
Tambdi-Mati, Taleigao-Goa .....Appellant  
V/s

The Public Information Officer,  
Peoples Higher Secondary School,  
Mala, Panaji-Goa .....Respondent

**CORAM:**

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

**Decided on:30/4/2018**

**ORDER**

1. The Commission while disposing the above Appeal vide order dated 28/02/2018 had directed to issue notice u/s 20(1) and 20 (2) of the Right To Information Act, 2005 to the Respondent Public Information Officer (PIO) for delaying in furnishing information.
2. In view of the said order passed by this Commission on 28/02/2018, the proceedings should converted into penalty proceedings.
3. Accordingly showcause notice were issued to PIO on 5/03/2018.
4. In pursuant to the notice, the PIO was represented by Advocate Shri. Raunak Rao, who filed his reply to showcause notice on 22/03/2018 alongwith supporting documents.
5. Written submission were submitted by the appellant on 4/04/2018 and on 18/04/2018. Oral arguments were advanced by both the parties.

6. I have considered the records available in the file and also submission of both the parties.
7. 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."***

8. 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?
9. The appellant contended that he has sought the information which was relating to DPC of the respondent in which she was placed at first position just above him and the final seniority list as on 31/5/2014 was drawn in violation of rules in force and therefore the Respondent is avoiding to provide those documents to him. It was further contended that the Respondent PIO was the manager of the School committee as such it is primary responsibility of Respondent PIO to collect those information from the authority holding such document and to provide the appellant as per the mandate of RTI Act. It was further contended that being PIO was also the manager of the School committee as such respondent PIO was having control over such information and that she was the custodian of records SMC of PHSS. He further contended Respondent PIO exercise supervision or control over the Managing committee as she was representing in two capacity as a manager and also as a Head of School. He further contended that it was obligatory on the part of the Respondent who is the manager of SMC to maintain record of the School Managing Committee.

10. Appellant further contended that the School management suppose to place documents before DPC committee. It is his further contention that seniority list was not provided to him as such he has sought inspection of DPC records and that PIO should have given him the inspection and furnished him the information.
11. It is his further case that the DPC is perverse as the documents on seniority of teacher as on 31/5/2014 was not drawn as per rules enforced under the education Act.
12. It is his further case that, on the seniority list the acknowledgment of all was taken and in his case remark is put refuse to sign 4/7/2014". It is his further contention that management ought to have sent him seniority list by post which management failed.
13. It is his further contention that though he received the letter dated 4/8/2015 of PIO he collected the information on 8/9/2015 as the PIO did not fixed any time limit for collection of information and further it is his specific case that he was harassed by Management committee and as such he was busy with inquiry proceedings and protecting his job.
14. The Advocate for respondent PIO. Submitted that the information requested by the application dated 4/5/2015 was not in possession of the Respondent PIO so also the Respondent was not exercising any control over this information, as such the application was forwarded to chairman of School managing committee vide letter dated 20/5/2015 and the copy of the same is forwarded to the appellant for his information and also in order to keep him informed the status of application . It was submitted that the chairman of School management committee does not come under PIO and they are higher authority then PIO.

15. It was further submitted that in due compliance of the order dated 27/7/2015 passed by the First appellant authority, the appellant was requested to carry out the inspection and to collect the information at item No. 2,3 and 4 after the payment of Rs. 22/- have been effected by him. It is the case of the Respondent PIO the appellant neither collected the document at serial No. 2,3,and 4 nor did the inspection at item No. 1,5,6 & 7.
16. It was further contended that, during the present appeal the inspection was given on several occasion to the appellant .
17. It was further submitted that Respondent is not a custodian of records pertaining to the business of school managing committee and the records pertaining to school managing committee are maintained and kept in the custody by the chairman of the School managing committee.
18. In support his contention he relied upon the affidavit of Dr. Vinay M. Surlekar , formal managing trustee of the peoples Education trust, mala panaji.
19. It is further submitted that PIO could have informed the appellant that information is not available but he chose to write to chairman and the delay in information was beyond the reasons of PIO.
20. In the nutshell, it the contention of Respondent PIO that chairman who was the administrative head of the said institution was holding the said information and he had sought his assistance within specified time limit in securing the information. Hence it is the case of the Respondent PIO that there was not willful intention on her part to refuse the information and that she have acted bonafidely in discharging her duties under the RTI Act.
21. The Advocate for the Respondent submitted that there is no evidence of malafied denied and to attract the penalty it should be "without any reasonable cause". as such it is his case

that ingredients of section 20 are not attracted in the facts of the present case . In support of his contention the PIO placed reliance on following judgment.

- i. AIR 2009 Punjab and Haryana page 53, writ petition No. 15288 of 2007 , S.P. Arora V/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 the information is required to be supplied within 30 days only if the records is available with the office”.

- ii. AIR 2010 Patna page 75 L.P.A. 988 of 2009 Arvind Prasad Singh V/s State .

It is held “imposition of penalty for not disclosure of information – order of penalty should contain apposite cogent and germane reasons and should clearly exhibit application of mind. It did not show the information office has, **without any reasonable cause**, refused to furnish the information u/s 7(1) or malafidely denied request to give information”.

- iii. AIR 2014 Uttarakhand page 40, writ petition No. 2730 of 2013, Narendra Kumar V/s the Chief Information Commissioner Uttarakhand. has held at para 9;

“Imposition of penalty on hyper technical ground that information was not supplied within 30 days seems to be totally unjustified and arbitrary”.

- iv. AIR 2015 Uttarakhand page 118, writ petition NO. 412 (MS) of 2009, Nagar Nigam, Dehradun V/s chief Information Commissioner .
22. The citation relied by the respondent PIO are squarely applicable to the facts of the present case . In the present case the records reveals that the moment PIO received the application she sought the assistance of chairman of the said managing committee and requested the chairman to furnish the requisite information to the appellant under intimation to the appellant . Apparently the PIO was not holding the said information and the administrative head, Chairman of School managing committee whose custody the said information was. As such I hold that PIO was diligent in her duties under RTI Act and that PIO cannot be made a scapegoat for the fault of some other person.
23. The explanation given by the PIO appears to be convincing and probable as the same is supported by the affidavit of former managing trustee Shri Vinay Surlekar . Vide affidavit Dr. Vinay M. Surlekar have contended that he was the custodian of all the records and correspondence of the school Managing committee by virtue of being its chairman and the same are retained by him in his cabin. Vide said affidavit he further contended that he had received letter dated 20//5/2015 from PIO thereby transferring the application filed u/s 6(1) of RTI Act by the appellant. It was further contended that the application pertained to records of school managing committee as well as disciplinary authority and as the disciplinary proceedings initiated against the appellant for misconduct was pending before the inquiry officer, he had to seek legal advice from the Advocate of the trust. He further contended that he could not take action in the matter as he was informed that first appeal have been preferred by the appellant

24. The High court of Punjab and Haryana at Chandigarh in civil w.p. No.6504 of 2009 ; state of Punjab v/s state information commissioner has held at para 3;

“The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and no hold up information which a person seeks to obtain. ***It is not every delay that should be visited with penalty. If there is a 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 a year and if there was a superintendent, who was prodding the Public Information officer to act, that it self 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 second respondents have got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified”.***

25. 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 were there is simple delay the commission had been clothed with adequate Powers”.***

Hence according to the said judgment penalty u/s (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 . In the present case PIO have tried to justify the reasons for not responding or not providing the information within 30 days time.

26. By considering the above ratios laid down by various High Courts, I hold that there are no grounds to hold that information was *intentionally and deliberately* not provided to him.
27. This Commission is not empowered nor have any jurisdiction to look into the grievance raised by the appellant with regards to drawing of Seniority list, DPC etc. The same can be agitated by appellant before an competent forum.
28. In the above circumstances I am of the opinion the levy of penalty is not warranted in the facts of the present case. Consequently showcause notice issued on 05/03/2018 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/-