

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

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**Penalty 49/2017**  
**In**  
**Appeal No. 98/2017**

Shri Nitin Patekar,  
Oshalbag Dhargal, P.O. Colvale,  
Pernem Goa.

.....Appellant

v/s

1) Then Public Information Officer (PIO),  
The Collector of North Goa District,  
Panaji Goa

.....Respondent

**CORAM:**

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

**Decided on: 29/01/2018**

**ORDER**

1. This Commission while disposing the above Appeal vide order dated 17/10/2017 had directed to issue notice u/s 20(1) to the Respondent, Public Information Officer (PIO) for not responding the application of the appellant within stipulated time and for delaying the information. In view of the said order passed by this commission on 17/10/2017, the proceedings should converted into penalty proceedings.
2. The showcause notice were issued to then PIO on 23/10/2017 .
3. In pursuant to the notice, the present PIO Shri Gurudas Dessai alongwith dealing hand Smt Effy D'mello and Shri Sagar Naik appeared and filed his reply on 08/11/2017 along with supporting documents. vide said reply he contended that he was not officiating as PIO when their office received the application of appellant i.e on 1/03/2017 as he was transferred as chief officer, Mapusa municipal council vide order dated 23/12/2016 and again he was retransferred to the said department vide order dated 3/5/17. He further contended that the dealing hand Smt Effy D'mello and Shri Sagar

Naik did not brought to his notice about the said application until he received the notice from this commission .He further contended that on inquiries with the dealing hands it was learnt that they both were deputed and were busy with the election related work of General Election 2017 .

4. The Dealing hand Smt Effy D'mello filled affidavit on 8/11/2017 affirming that she could not process the said application within time as she was deputed for election duty vide order dated 14/11/2016 and that she was posted at the Entertainment society of Goa .
5. The Dealing hand Shri Sagar Naik also filed affidavit on 8/11/2017 affirming that he could not process the said application within time as he was deputed for election duty vide order dated 14/11/2016 and that was posted at the with the office of Shri Pradip Naik .
6. Since the present PIO during the hearing on 23/11/2017 submitted that at the relevant time when the application was received in their Office , Shri Clen Madeira was officiating as PIO , a fresh notice was issued to him on 23/11/2017.
7. The then PIO Shri Clein Madeira filed his reply on 24/1/2018 vide his reply he have contended that the said application was not placed before him, as such he was not aware of the same. He further contended that as he was busy with election duty, he was unacquainted with the filing of RTI applications .
8. In the nutshell, it is the contention of the Respondents that there was no willful intention on his part to refuse the information and that he have acted bonafidely in discharging their duties under the RTI Act.
9. I have perused the records available in the file so also considered the submissions made on behalf of both the parties.
10. 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.”***

11. 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?
12. Both the dealing hands had submitted that they could not process the application received under RTI ACT on account of their posting at some different place for the purpose of attending assembly election work of 2017 . They have sworn affidavit affirming the said fact as such it could be gathered that PIO was not aware of the said application since it was not placed before him as such it is not appropriate to arrive at the conclusion that the said information at point no.3 was denied to the appellant intentionally and deliberately. On the contrary bonafied have been shown by present PIO as moment he received the notice of this commission he provided the said information to the appellant.
13. Apparently there is an delay approximately about 5 months, in furnishing the information at point No. 3 however the PIO has tried to justify the same .
14. The Hon'ble High Court of Bombay at Goa in writ petition No. 704/12 public authority V/s Yashwant Sawant which was decided on 08/05/2017 has held 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”.

15. Yet in another decision 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”.***

16. 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 appears that there was no justification for imposing penalty of Rs 6000/- against the petitioner. ”

17. The explanation given by the PIO appears to be convincing and probable. And 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.
18. As such I am of the opinion the levy of penalty is not warranted in the facts of the present case. Consequently showcause notice issued on 23/10/2017 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/-

