

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

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Appeal No.1/2019/SIC-I

Shri Jawaharlal T. Shetye,  
H.No.35/A,W. No-11,  
Khorlim, Mapusa- Goa.

....Appellant

V/s

1) The Public Information Officer,  
Mapusa Municipal Council,  
Mapusa Goa-403507

2) First Appellate Authority,  
Chief Officer,  
Mapusa Municipal Council,  
Mapusa-Goa.

.....Respondents

**CORAM:**

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

Filed on: 04/01/2019  
Decided on: 26/3/2019

**ORDER**

1. The brief facts leading to present appeal are that the appellant Shri J.T. Shetye herein by his application dated 13/8/2018 filed under section 6(1) of Right to Information Act, 2005 sought certain information on 9 points from the Respondent No.1 Public Information Officer (PIO), Mapusa municipal council, Mapusa-Goa, as stated therein in the said application pertaining to the representation dated 17/10/2017 made by Shri Shankar R. Pednekar to the chief officer of Mapusa municipal council, inspection of records pertaining to re-auctioning of 54 shops/stalls situated at Mapusa market, total revenue generated there from etc and the certified copies of the judgments /orders passed by the chief officer in the cases as listed in the said RTI application .
2. It is the contention of the appellant that his above RTI application was responded by the respondent No.1 PIO on 10/9/18 wherein he was directed to deposit an advance amount of Rs 2000/- within 7 days from the receipt of the letter.

3. It is the contention of the Appellant that in pursuant to the said letter of respondent PIO, he deposited Rs 2000/- in cash on 17/9/2018 in the municipal treasury and in support of his said contention he relied upon the receipt issued to him by Mapusa Municipal council.
4. It is the contention of the appellant that as the PIO Shri Venkatesh Sawant was on leave, he contacted APIO Shri Vinay Agarwadekar who informed him that he is not having any information pertaining to his RTI application and advised him to wait and to collect it from PIO.
5. It is the contention of the appellant that he met PIO Shri Sawant on 24/9/2018 on resuming back on his duties ,however PIO showed his helplessness to provide the information sought by him, by saying that his subordinate dealing hand are not co-operating with him .
6. It is the contention of the appellant that he being aggrieved by verbal reply of respondent No. PIO and as the Respondent No. 1 PIO ignored and failed to furnish him any information within a stipulated period of 30 days despite of the depositing the fees as such deeming the such as rejection, he preferred first appeal on 8/10/2018 before the Respondent No. 2 The Chief Officer of Mapusa Municipal Council, Mapusa- Goa, in terms of section 19(1) of RTI Act, 2005 being the first appellate authority and the Respondent No. 2 first appellate authority by an order dated 21/11/2018 allowed his first appeal and directed Respondent PIO to furnish the information to the appellant within a period of 15 days, free of cost and to refund the money.
7. It is the contention of the appellant that in spite of the said order from Respondent No.2 first appellate authority, the said information was not furnished to him by respondent No.1 PIO and as such he is forced to approach this commission on 4/1/2019 in this second appeal as contemplated u/s 19(3) of RTI Act, 2005 , thereby seeking

relief of direction to PIO to furnish him the information as sought by him and to scrupulously comply with the directions given by the Respondent no.2 FAA , so also for invoking sub-section (1) and (2) of section 20 of the RTI Act,2005 and compensation for not providing information within time.

8. Notice were issued to both the parties. In pursuant to which appellant appeared in person. Respondent No.1 PIO Shri Vyankatesh Sawant appeared along with Advocate Matlock D'Souza. Respondent No.2 first appellate authority opted to remain absent.
9. During the proceedings before this commission the Respondent PIO sought time to furnish the information to the appellant and also to file appropriate reply in appeal proceedings. However the PIO failed to furnish the requisite information to the appellant neither filed any reply in the present proceedings despite of giving opportunities. As such I presumed and hold that PIO has no any say to be offered and the averment made in the memo of appeal are not disputed.
10. Arguments were advanced by both the parties.
11. It is the contention of the appellant that the respondent PIO Mr. Venkatesh Sawant persistently and deliberately did not provided information even after legal order from his higher authority there by showing no respect to RTI Act 2005. It is the contention of the appellant that the refusal to furnish the information sought for by him within stipulated time is contrary to the provision of RTI Act 2005 and as such Respondent PIO have failed in discharge of his duties by not complying with the provisions of RTI Act, 2005. He further submitted that lots of his valuable time has been lost in pursuing his RTI application besides causing him mental agony. He further submitted that till date an amount of Rs 2000/- has not been refunded to him.
12. It is the contention of the Respondent PIO that this appellant abuses the RTI Act and as such the appellant has to be black listed

from filing any RTI against Mapusa Municipality. It was further contended that the appellant is every time cribic that he is a senior citizen but has all the time to file all RTI application, 1<sup>st</sup> appeals, complaint ,penalty and second appeals. It was further contended that the appellant is only harassing all the staff members as he is interested in taking out his personal vengeance against his enemies and the staff of the municipality. It was further contended that through the forum of RTI appellant tries to get his complaints, representations against many persons completed without proceedings to the appropriate authority in accordance with law. It was further contended that the appellant has scant regards to the RTI Act. It is further contended that the appellant has been filing applications of similar nature in multiple times and or repetitive time. Respondents PIO states that every alternate days he is in this forum either representing in person or is in his office only looking after multiple RTI applications filed by appellant and as such it is not possible for the Respondent PIO to submit any information to this appellant within 30 working days. It was further contended that with regards to point No.1 in respect to serial No. 1, 2, 3, 4, 5, information is ready. It was further submitted that specially with regards to serial no. 5 the appellant has asked the files of 54 shops of above 108 stalls in the Municipal market from the commencement of publishing quotation notice by the Establishment Department and the same being voluminous, the appellant may approach the concerned dealing hand Mr. Ramesh Kinelkar, UDC for said inspection between 29/3/2019 between 11.00 to 12.00 Pm. It was further submitted that information with regards to point no. 6 records are not available in the office of Respondent PIO .Advocate for Respondent PIO further states that Charge of PIO has been given to Diniz D'melo and presently he is on election duty as such the reply could not have been signed by the present PIO. Respondent PIO states that since the present month is in code of conduct and the present PIO has to leave his office and go for

training and has to join his election duties and is presently deputed in the flying scot where he had to attend all the illegalities. It was also contended that then PIO Shri Venkatesh Sawant is hardly in office and is more before State Information Commission because of the appeals, complaints being filed by the appellant. It is contention of the PIO that on the receipt of the applications filed under RTI, he seeks necessary information from the concerned clerk and the concerned clerk does not hand over to him requisite information on time. It is his further contention that the appellant is filing repeated application for the same information after the gap of some time and the appellant is every day in the office of Respondent harassing the staff and trying to impose that the action will be taken on them through RTI.

13. It is his further contention that the appellant is trying to get the information which is not available and trying to paralyze the functioning of Municipalities due to some personal enmity and is trying to settle scores with councilors .
14. It is contention of the PIO that appellant has been abusing the said system and has targeting the process of RTI's by keeping on filing various RTI's against the Mapusa Municipal Council with motive of hampering the functioning of Municipality. It is his contention that the appellant is trying to induce the PIO and the other staff of Municipality to give the information. It was further submitted that the appellant is not seeking to pursue any legal remedies but he is only harassing the Respondent by filing number of complaint.
15. The Respondent No.1 PIO undertook to refund an amount of Rs 2000/- earlier deposited by the appellant towards the fees for the said information and accordingly same was refunded on 26/3/2019
16. I have scrutinized the record available in the file so also considered the submissions made by the parties.

17. The RTI Act came into existence to provide fast relief as such the time limit is fixed to provide the information within period of 30 days, to dispose the first appeal maximum within 45 days and to transfer the application interms of section 6(3) within 5 days. In the present case though the record reveals that the application of the appellant was responded within those 30 days time directing him to deposit Rupees 2000/- towards fees for the said information however it is seen that despite of deposit of fee by the appellant, no information was furnished to the appellant.
18. It is seen from the record that the first appeal was filed by the appellant on 8/10/2018 which was disposed by Respondent NO. 2 First appellate authority on 21/11/2018. During the intervening period of the first appeal also no bonifides have been showed by the PIO to furnish the information to the appellant. order dated 21/11/2018 was passed by Respondent No. 2 after giving opportunity to both the party to substantiate their case. On perusing the proceedings sheet of first appeal No. 101/2018, it is seen that during the proceedings the APIO of Mapusa Municipality Shri Vinay Agarwadekar was present and the Respondent No.2 first appellate authority had passed the order in the presence of the parties. As such the Respondent no.1 PIO was aware of the order passed and the direction issued to him for furnishing the information within 15 days and for refunding an amount of Rs 2000/- . It is also not the case of PIO that the order of the First appellate authority was challenged by him or has complied the order of first appellate authority. The PIO has also not placed on record any correspondence made by him to the appellant in pursuant to the said order. No reasons whatsoever nature were conveyed either to the first appellate authority nor to the appellant herein why he could not comply the said order in time.
19. Only during the present proceedings the PIO have contended that due to magnitude of RTI Application and the appeals being filed

by appellant herein the Respondent could not submit the requisite information within 30 days time nor could submit the information as per the directions of first appellate authority. The above difficulties faced by the Respondent herein even if considered genuine however the same is not recognized and cannot be considered as a ground for denying or delaying the information as there is no bar for filing application by one person before the same authority so also the constitution of India and the Right to information Act also guarantees and recognizes the right of a citizen to seek information and to prefer appeals.

20. The contention of the appellant that he has to be before this commission on every alternate day attending the second appeal filed by the appellant cannot be ground to deny the information since the provisions 19(1) and (2) of RTI Act, 2005 stipulates the right to the appellant to prefer first or second appeal in case he is aggrieved by the decision of the PIO, so also if no required information is provided within 30 days time. As per section 20 also penalty can be imposed on PIO if the information not furnished within the time specified under sub section (1) of section 7.

The Respondent PIO cannot make a grievance due to the filing of first and second appeals lots of his time his wasted in appearing before first and second appellate authority and the same cannot be considered as the Respondent PIO is himself responsible for the same. If the PIO have provided him correct and complete information within stipulated time or even before filing first appeal, the appellant would have not approached the first appellate authority with his grievances. In the present case the despite of the order of first appellate authority no information came to be provided to the appellant as such the appellant have landed before this commission in the second appeal. The conduct and the attitude of the Respondent PIO himself have forced the appellant to pursue the matter before different authorities and it is the need of the hour that the Respondent PIO should re-introspect himself.

21. One of the contentions of the Respondent is that the concerned dealing clerk does not hand over to him the requisite information within time for the purpose of onward submission to the information seeker. However nothing is placed on record by the PIO of having taken the assistance of the dealing clerk or having issued him memo for not submitting the information on time or reporting the conduct of the dealing clerk to his higher-ups for appropriate action on him for dereliction of his duties. In absence of any such documents it is not appropriate on the part of this commission to arrive at any such conclusions.
22. The onus lies on the party who makes the averment to prove such averment by way of cogent and convincing evidence. Though the Respondent have contended that (i) Appellant have been filing repeated application for the same information after the gap of some time, (ii) trying to get the information which is not available with an intention of paralyzing the functioning of Municipality due to some personal enmity, and (iii) the Appellant is every day in the office of Respondent harassing the staff and inducing the PIO and the other staff to give information, has failed to produce any evidence in support of his above contention.
23. From the conduct of the PIO it can be clearly inferred that the PIO has no concern to his obligation under the RTI Act or has no respect to obey the order passed by the senior officer. Such a conduct of PIO is obstructing transparency and accountability appears to be suspicious and adamant vis-a-vis the intent of the Act.
24. Public authority must introspect that non-furnishing of the correct or incomplete information lands the citizen before first appellate authority and also before this commission resulting into unnecessary harassment of the common man which is socially abhorring and legally impermissible.
25. From the above gesture of PIO, I find that the entire conduct of PIO is not in consonance with the act as he repeatedly failed to provide



information and the same is still not provided. I find prima facie some substance in the argument of the appellant that the PIO purposely and malafidely refused access to the information. Such an lapse on part of PIO is punishable u/s 20(1) and 20(2) of the RTI Act. However before imposing penalty, I find it appropriate to seek explanation from the PIO as to why penalty should not be imposed on him for non compliance of order of first appellate authority and for delaying the information.

26. This commission is aware of the practical difficulties faced by the PIOs. The officer of the public authority designated as PIOs have other duties also and the duties to be discharged by them as PIO is an additional duty. The dealing with the request for information is a time consuming process. Time and again this commission had directed the public authority to comply with section 4 of RTI Act so that public have minimum resort to the use of this Act to obtain information. It appears that the public authority concerned herein is not serious in implementing section 4 of RTI Act.
27. Before parting it needs also to mention that the appellant during the mid argument of Respondent PIO, arrogantly raised his voice and showed his exception on the quantum of penalty imposed on PIO in proceedings filed by him, and also for not recommending disciplinary proceedings against PIO and then walked out in the proceedings in hurry showing scant respect to this Commission. Such a conduct on the part of appellant is deplorable and was least expected from RTI activist like appellant. Needless to say that if appellant was aggrieved by the orders passed by this Commission, it was open for him to move against said orders before competent forum.
28. I therefore dispose the present appeal with order as under ;

Order

a) Appeal allowed.

- b)The Respondent No.1 PIO is directed to comply with the order passed by the First appellate authority dated 21/11/2018 and to provide the available information to the appellant including inspection as sought by appellant vide his RTI Application dated 13/8/2018, within 20 days from the date of receipt of this order by him.
- c) Issue notice to respondent No. 1 PIO to Show cause as to why no action as contemplated u/s 20(1) and /or 20(2) of the RTI Act 2005 should not be initiated against him/her for contravention of section 7(1), for not complying the order of first appellate authority and for delay in furnishing the information.
- d)In case the PIO at the relevant time, to whom the present notice is issued , is transferred, the present PIO shall serve this notice along with the order to him and produce the acknowledgement before the commission on or before the next date fixed in the matter along with full name and present address of the then PIO.
- e) Respondent, PIO is hereby directed to remain present before this commission on 8/04/2019 at 10.30 am along with written submission showing cause why penalty should not be imposed on him.

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.