

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

---

Appeal No. 156/2019/SIC-I

Mr.Ivo Fernandes ,  
Pongirwal, Curchorem-Goa

.....Appellant

V/s

1. The Public Information Officer (PIO),  
Asst. Registrar of Cooperative Societies,  
Quepem Zone, Quepem-Goa,  
South Goa.

.....Respondent

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

Filed on: 28/05/2019  
Decided on:26/11/2019

**ORDER**

1. The second appeal came to be filed by the appellant Shri Ivo Fernandes on 27/5/2019 against the Respondent Public Information Officer (PIO) of the office of Assistant registrar Cooperative Societies, Quepem Zone, Quepem, South-Goa as contemplated under sub section (3) of section 19 of RTI Act, 2005.
2. The brief facts leading to the second appeal are that the appellant vide his application dated 16/1/2019 had sought for the information on 4 points as stated therein in the said application pertaining to Messias Multipurpose Co-operatives Society Ltd, Curchorem Goa. The said information was sought from respondent PIO in exercise of appellant's rights under sub section(1) of section 6 of RTI Act, 2005
3. It is the contention of appellant that the said application was responded on 14/2/2019 by the Respondent PIO in terms of sub section(1)of section 7 of RTI Act, 2005, however according to him misleading, incomplete and false information was supplied

vide said reply dated 14/2/2019 so also the name and address of competent authority and also the time limit to redress grievance was not supplied to him.

4. In this background the appellant has directly approached this commission with the present appeal on the grounds raised in the memo of appeal there by seeking relief of invoking penal provision u/s 20(1) and 20(2) of RTI Act, 2005 and for making all the Cooperative societies coming accountable under RTI Act.
5. The matter was taken upon board and was listed for hearing after duly intimating the parties. In pursuant to notice of this commission appellant appeared in person. Respondent PIO Shri P.A. Parab was present.
6. Reply filed by the respondent PIO on 16/7/2019. The copy of the same was furnished to the appellant. The appellant also filed counter reply on 23/8/2019 and the copy of the same was furnished to the Respondent herein.
7. During the hearing on 16/9/2019 the appellant submitted that his grievance is only in respect to the information provided to him at point No. 3. It is his contention that inquiry report furnished to him at point No. 3 is not related to inquiry dated 18/4/2018 but some other inquiry report submitted by the inquiry officer Vinod K. Naik vide letter dated 25/6/2018. It is his contention that PIO failed to provide him information i.e. the inquiry report conducted by Santosh Velip with inward No. 323.
8. It was further contended that the PIO has prejudice mind against him since the day i.e. 06/04/2018 the first complaint was logged and inquiry was sought against the Chairman of the Society for mismanagement and misappropriation of funds by him. It was further contended that the respondent PIO is hand in gloves with the Chairman to avoid supplying correct information.

9. It is his further contention that the authority ought you have noticed carefully the forged and manipulated inquiry submitted by co-operative officer and Senior auditor on 14/06/2018 and 11/05/2018 under the influence of chairman which was conducted without even intimating him.
10. It is further contention of the appellant that though the Respondent have admitted that the copies of minutes book were obtained by the investigation officer for a specific purpose i.e. while conducting inquiry of the section 76(A) but PIO gave false information that the "*same are not available in records*" It was further contented that till date respondent PIO vide reply dated 14/02/2019 intentionally failed to provide him minutes of the BOD Meeting (resolution copies) in which the 13<sup>th</sup> loan sanctioned information is not available on record, although they were enclosed in the inquiry Report supported by Shri Vinod K. Naik.
11. In the nut shell it is the case of the appellant that he has been supplied wilfully wrong information of the inquiry conducted on 17/06/2018 and not of 18/04/2018 even though the required information was available on the record of the office.
12. It is the contention of Respondent PIO that there was no inquiry report pertaining to letter dated 18/11/2018 and it was pertaining to letter dated 18/4/2018 and he has clarified the said fact in his reply dated 14/2/2019 given interms of section 7(1) of RTI Act.
13. It was further contended by Respondent PIO that he provided the requisite Information which was available on records of the opponents vide letter dated 14/2/2019. It was further contended that PIO is not suppose to generate the information but bound by the RTI act, 2005 to provide information available in the records in their office. It was further submitted that the inquiry officer under his letter dated 25/6/2018 mentioned the date of his visit to society was on 17/6/2018 but whereas vide furnishing

information to the appellant the same was mentioned as 18/4/2018 hence it appears to be some topographical error. It was further submitted that minute book is part of society records and same in the custody of society and their office have no any access in the said records. It was further contended that the allegation made by the appellant are baseless and without application of mind. It was further stated that Shri Vinod Naik was authorised to conduct the inquiry in the function of society especially in relation to granting of loans to the members of B.O.D and their close relatives so the inquiry officer is legally having access of all records of the society and therefore he manage to get copy of the minutes book which was required in connection with this inquiry, hence the same forms the part of the inquiry report. It was further contended that the appellant has filed the present appeal with main intention to harass the opponent and has not approached with clean hand before this commission.

14. The Respondent PIO vide application dated 18/10/2019 submitted the copies of inquiry report dated 11/5/2018 submitted by the inquiry officer Shri Santosh B. Velip and inquiry report dated 25/6/2018 submitted by Shri Vinod K. Naik.
15. In the nut shell it is the contention of the respondent PIO that there was no any malades intentions on his part and the available information has been furnished to the Appellant.
16. I have scrutinised the records available in the file so also considered the submission of both the parties.
17. The Appellant in the present proceedings has sought for invoking penal provisions in terms of section 20 (1) and (2) of RTI ACT .
18. Under the statute, options are kept open to all the parties to raise their all concerns before the appellate authority and all the parties gets opportunities to substantiate their case before the

appellate authorities. The hierarchy of the forum is also specified under the RTI Act and the word "appeal proceedings" used in under section 19(5) also includes first appeal as contemplated under section 19(1) of RTI Act.

19. The Hon'ble Apex Court in civil appeal No. 10787-10788 of 2011, Chief Information Commissioner V/s State of Manipur has held;

"A right of appeal is a right of entering a superior forum and invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information".

20. Hence according to the ratio laid down by the Apex Court in above case, any information seeker who is aggrieved by the decision/reply /furnishing of incomplete or incorrect information by the PIO, ought to file first appeal before the first appellate authority interms of section 19(1) of RTI Act .
21. On perusal of the records it is seen that the appellant have approached this commission directly without exhausting his remedy interms of section 19(1) of Right to Information Act. If the appellant was aggrieved with the fact that wrong information at point no.3 was furnished by PIO, he should have within 30 days of reply of PIO under section 7 of RTI Act, filed first appeal with the first appellate authority which is not done by the appellant. By not filing first appeal the parties have been deprived of a forum available to them to justify their claims. Nevertheless the respondent PIO during the proceedings showed his bonafide by furnishing both the inquiry reports.

22. Be that as it may be, the various Hon'ble courts have given circumstances under which the penalty can be imposed.

23. The Hon'ble High Court of Bombay at Goa bench in Writ Petition No. 205/2007 Shri A. A. Parulekar V/s Goa State Information Commission and others has observed:

“11. The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the **failure to supply the information is either intentional or deliberate.**”

24. The Delhi High court Yet in another decision in writ petition No. (c) 5469/ 2008, CoL. Rajendra Singh v/s Central Information commission and another has held

“Section 20 no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the commission has to be satisfied that the delay occurred was without reasonable cause or that there the refusal to receive application or the request was denied malafidely”.

25. Hence according to the ratio laid down by the above judgment the PIO can be penalise for his failure to supply the information when in case it is either intentional or deliberate.

26. On scrutinising the RTI Application dated 16/1/2019 vis-a-vis the information furnished vide reply dated 14/2/2019, it is seen that the same was responded within stipulated time of 30 days thereby providing the available and permissible information. In the said reply also at the first para the respondent PIO have clarified that the correct date is 18/4/2018 instead of 18/11/2018 and also submitted the relevant inquiry report.

27. The appellant have no grievance regards to the other information furnished to him by the respondent PIO vide reply

dated 14/2/2019 except the information at point No.3 i.e. the inquiry report.

28. The onus lies on the person/party who makes the averments to prove the same. Though the appellant has made averment that a wrong inquiry report was submitted to him by the PIO, however he has not placed the inquiry report submitted to him by the Respondent PIO vide reply dated 14/02/2019. Hence in absence of any such of documentary evidence, it is not appropriate on the part of this commission to draw any such conclusions. Even assuming for a while the above contention of the appellant, however the appellant was not able to demonstrate beyond reasonable doubt that the PIO Malafidely denied him the same.
29. On the contrary, the PIO during the hearing on 18/10/2019 once again filed application and clarified with regards to information at point No.3 and submitted both the inquiry reports dated 11/05/2018 and 25/06/2018 submitted by Inquiry Officers, Shri Santosh B. Velip and by Shri Vinod K. Naik respectively.
30. The documents relied by the appellant himself speaks for itself. The letter dated 8/1/2019, a letter dated 2/5/2019 purportedly the replies given interms of section 7 of the RTI Act to the other RTI applications filed by the appellant pertaining to the said Messiah Multipurpose Cooperative societies Ltd., Curchorem-Goa, relied by the appellant himself shows the bonafide on the part of PIO in furnishing the information to the appellant in other RTI matters within stipulated time to 30 days. Letter dated 3/4/2019 addressed to the Chairman of Messiah Cooperative society by the Respondent PIO Shri P.A.Parab also relied by the appellant reveals that efforts were made PIO Shri P.A. Parab in securing the information from the said society. Letter dated 5/11/2018 also relied by the appellant addressed

to the Chairmain of Messias Cooperative society by Shri P.A. Parab also reveals that the said society was advised to recover the loan sanctioned by the Board of Directors and its relatives within 8 days. Hence I could not find any force in the arguments that the Respondent PIO is hand in gloves with the Chairman of the said society.

31. The contention of the appellant that he is not provided the minutes of the committee meetings (resolution copies) in which the 13 loans were sanctioned and hence he claimed that incomplete information was provide to him. On scrutinising his application dated 16/1/2019 which is subject matter of present appeal it is seen that no such minutes were sought by the appellant in the said application. There is nothing on records to show that the resolution copies minutes of the committee were enclosed to the inquiry report by the inquiry officers and was forming part of the same. Hence I am not inclined to accept the above contention of the appellant .
32. The appellant is trying to seek relief at point No. (2) of making cooperative society accountable and to be bound under the RTI Act. In order to bring such cooperative societies within the ambit of public authorities, the criteria is specified under section 2(h) of RTI Act has to be fulfilled. There is no documentary evidence produced by the appellant exhibiting that the above society is substantially financed and controlled by Government or other criteria's specified in the said section. It is also not the case of Respondent PIO that the said society is a public authority coming with in the ambit of RTI Act. Hence in the given circumstances the blanket relief sought by the appellant cannot be granted.
33. It appears from the memo of appeal that the appellant has got grievance with the inquiry report submitted by cooperative



officer and senior Auditor vide reply letters dated 14/6/2018 and 11/5/2018. This commission is not empowered and has no jurisdiction to decide about the inquiry report. The appellant can redress his grievance if so desire with the competent forum.

34. The Hon'ble High Court of Delhi in Writ Petition (c) 3114/2007 Bhagat Singh V/s CIC has held that ;

“ The petition has not been able to demonstrate that they malafidely denied the information sought therefore a direction to central information commission to initiate action on the section 20 of the act cannot be issued “.

35. The hon'ble High Court of Bombay at Goa in writ petition No. 704/12 public authority V/s Yeshwant Sawant has held that at para 6;

“ The imposition of such penalty is a blot upon the career of the officer at list to some extent ,in any case the information ultimately furnished though after some marginal delay in such circumstances , therefore, no ought to have been imposed upon the PIO”.

36. By subscribing to the above ratios laid down in writ petition No. 704/12 public authority V/s Yeshwant Sawant(Supra) and in case Bhagat Singh (Supra), as there is no sufficient, convincing and cogent evidence on record produced by the appellant showing malafide on the part of Respondent PIO, this commission is of the opinion that this is not a fit case warranting levy of penalty on PIO.

37. In view of discussion above and in view of facts and circumstances of present proceedings, this commission does not

find merits in the present appeal and hence not inclined to grant reliefs sought by the appellant.

38. It is hereby observed that the Respondent PIO has not complied with the provisions of section 7(8) (ii) and (iii) of the RTI Act. The said section is mandatory in nature. Hence the Respondent PIO is hereby directed to comply the said section in true spirit henceforth.
39. With the above direction the proceeding stands closed.

Notify the parties.

Pronounced in the open court.

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.