

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

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**Complaint No: 66/2018/SIC-I**

Shri Jawaharlal T. Shetye,  
H.No.35/A,W. No-11,  
Khorlim Mapusa Goa.  
Pincode-403 507

...Complainant

V/s

- 1) The Public Information Officer,  
Mr. Venkatesh Sawant,  
Mapusa Municipal Council,  
Mapusa Goa.
- 2) First Appellate Authority,  
The Chief Officer (Mr. Clen Madeira),  
Mapusa Municipal Council,  
Mapusa-Goa.

..... Respondent

**CORAM:**

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

**Filed on:11/12/2018**

**Decided on:28/2/2019**

**ORDER**

1. This Order disposes the present complaint filed u/s 18(1) RTI Act, 2005 by the complainant herein. The brief facts leading to present complaint are as under:
2. (a) The complainant Shri J.T.Shetye by application dated 21/6/2018 filed u/s 6 (1)of the RTI Act, 2005 sought certain information pertaining to complaint dated 17/2/2016 made to Chief Officer of Mapusa Municipal Council by him against illegal construction of some structure (shop kiosk) adjacent to new bus stop outside the New Mapusa Municipal Council building.  
  
(b) It is the contention of the complainant that the said application was not responded by the PIO as contemplated under the RTI act as such deeming the same as refusal, the complainant filed first appeal on 7/8/2018 before the

Respondent No. 2 herein and the Respondent No. 2 first appellate authority by an order dated 17/10/2018 allowed the said appeal and thereby directed the respondent PIO to provide the information within 15 days free of cost to the complainant as sought by him by his application dated 21/6/2018.

(c) It is contention of the complainant that despite of the order of Respondent No. 2 first appellate authority as no information was furnished to him within stipulated time and being aggrieved by the actions of Respondent No.1 PIO, he had to approach this commission by way of the present complaint on 11/12/2018.

3. In the present complaint he has sought for direction as against respondent PIO for furnishing him the requested information as sought by him, free of cost, and for invoking penal provision and compensation.
4. The matter was listed for hearing and was taken up on board after intimation to both the parties. In pursuant to the notice of this commission, Complainant was present in person. Respondent PIO Shri Venkatesh Sawant was present along with Advocate Matlock D'Souza .
- 5 . Reply filed by Respondent PIO on 6/2/2019. Copy of the same was furnished to the Complainant.
6. Arguments were advanced by both the parties.
7. It is the contention of the Complainant that the PIO have shown scant respect to the provisions of the RTI Act so also to his higher authority. He further submitted that great hardship has been caused to him in pursuing his said application and till date no any information has been furnished to him despite of order of first appellate authority and he prayed to grant reliefs as sought by him.
8. It is the contention of the Respondent PIO that multiple hand

written application are filed by the complainant which becomes very difficult for PIOs and the clerks to understand and the same has to be read over and over again. 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 contention that he has to attend all the appeals before the first appellate authority and almost two hours goes in attending the same and thereafter another half days goes in attending the second appeal as he has to travel from Mapusa to Panajim. It is his further contention that he has also charge of Assistant Engineer and his other works gets delayed due to various RTI applications and the appeals filed by the Complainant. It is his further contention that the complainant is filing repeated application for the same information after the gap of some time and the complainant 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.

9. It is his further contention that with the coordination of all the concerned staff he tries to submit the requisite information to the complainant in time but due to the magnitude of the RTI applications and the appeal being filed by the complainant herein, the Respondent could not submit the requisite information as per direction of first appellate authority.
10. It was further contended by Respondent PIO that concerned clerk had not placed the requisite file before the Respondent as the same was not traceable. It was further contended that the office bearers and the staff of Mapusa Municipalities are taking all steps and process initiate action with regards to the lost files.
11. It is his further contention that the complainant is trying to get the information which is not available and trying to paralyse the

functioning of Municipalities due to some personal enmity and is trying to settle scores with councilors .

12. It is contention of the PIO that complainant 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 complainant is trying to induce the PIO and the other staff of Municipality to give the information. It was further submitted that the complainant is not seeking to pursue any legal remedies but he is only harassing the Respondent by filing number of complaint.
- 13 I have perused the records available in the file so also considered the submission made on behalf of both the parties.
14. The complainant at prayer (I) has sought for the directions to the PIO for furnishing him correct and complete information as sought by him vide his application dated 21/6/2018 free of cost. However in view of the ratio laid down by 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)*** and Hon'ble 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, this Commission has no powers under section 18 of RTI Act to provide access to information which have been requested for or which have been denied to any information seeker and the remedy would be to file appeal as provided under section 19 of the RTI Act. Hence the relief sought by the complainant at prayer-(i) cannot be granted in a complaint proceedings.

15. The only order which can be passed by the commission, as the case may be, u/s 18 is an order of penalty provided u/s 20 of RTI act. However before such order is passed the commission must be satisfied that the intention of the Respondent PIO was not bonafides.
16. 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 the record reveals that the application of the appellant was not responded within those 30 days time neither the order of first appellate authority was complied within time nor the information is furnished to the complainant till the complaint was filed. It is also not a case of PIO that he had responded to the application of the complainant .
17. The first appeal filed by complainant on 7/8/2018 which was disposed on 17/10/2018. During the intervention period of the first appeal also no bonafides have been shown by PIO to furnished him the information. The records reveals that after hearing both the parties including the PIO herein the order was passed by the first appellate authority directing the PIO to furnish the information within 15 days .
18. The Hon'ble Gujarat High Court in special civil Application No.8376 of 2010 case of Umesh M. Patel V/s State of Gujarat has held that Penalty can be imposed if first appellate authority order not complied. The relevant para 8 and 9 is reproduced herein.

“Nevertheless, I cannot lose sight of the fact that the petitioner did not supply information, even after the order of the appellate authority, directing him to do so. Whatever be the nature of the appellate order the petitioner was duty bound to implement the same,

whether it was a speaking order or whether the appellate authority was passing the same after following the procedure or whether there was any legal flaw in such an order, he ought to have complied with the same promptly and without hesitation. In that context, the petitioner failed to discharge his duty.”

19. Hence according to the above judgment the PIO is required to implement the order of the first appellate authority unless he moves against the said order before competent authority. 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 complainant in pursuant to the said order. No reasons whatsoever nature were conveyed either to the first appellate authority nor to the complainant herein why he could not complied the said order in time. If the information was not traceable or lost as claimed by the PIO during present proceedings, I failed to understand what prevented PIO to intimate such fact either to the first appellate authority or the complainant.
20. Only during the present proceedings the PIO have contended that due to magnitude of RTI Application and the appeals being filed by complainant 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.

21. 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.
22. The Respondent during the present proceedings for the first time have come out with stand that the concerned clerk had not placed the requisite file before him as the same was not traceable. Such a stand was never taken by the Respondent PIO at the initial stage nor before the first appellate authority. The information was sought in the year 2018 pertaining to complaint lodged by complainant on 17/2/2016 against the illegal constructions. The Xerox copy of the said complaint which is placed on record by the complainant bears the acknowledgment stamp of the office of Respondent of having received the same. Within a period of two years the same has been reported as misplaced and or not traceable. The respondent PIO has not placed on record any documents showing that missing file/ documents was reported to his higher ups either by him or by the concerned dealing clerk and any inquiry to that effect have been made by the public authority. No copy of the FIR if any filed by the public authority is also placed on record. On the contrary on perusing the order dated 17/10/2018 passed by the first appellate authority, it reveals that the PIO Shri Sawant was present during the hearing and the said appeal was disposed after hearing of both the parties wherein directions was given to furnish the information within 15 days to

the appellant. There is nothing on record to show that the PIO have reported and or submitted before the first appellate authority above the non traceability of the file/documents. Even the first appellate authority went on presumption that the information is available and as such passed such an order. Even during the present proceedings the PIO also did not placed any documents on record neither filed any affidavit in support of his contention the records/documents cannot be traced and or lost. Hence the above belated stands taken by the PIO appears to be after thought.

23. Even assuming for a while the above contention of the PIO that the files cannot be traced and/or lost, however in view of the decisions of the Hon'ble High court of Delhi in writ petition © 36609/12 and CM 7664/2012 (stay) in case of Union of India V/s Vishwas Bhamburkar and (ii) in another decision of the Hon'ble High Court of Bombay in writ petition No. 6961 of 2012 Vivek Kulkarni V/S State of Maharashtra, it was abundant on the part of public authority to conduct inquiry and to fix responsibility for the loss of records and to take appropriate action against the officer for the loss of records. It appears that no such an exercise was carried by the public authority. Unless such an action is resorted by the public authority it would not be appropriate for any public authority/Department/office, to deny the information which otherwise is not exempted from the disclosure.
24. One of the contention 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.

25. 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) complainant 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 a intention of paralyzing the functioning of Municipality due to some personal enmity, and (iii) the complainant 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.

26. The Hon'ble High Court of Punjab and Haryana. In Civil Writ Petition No.14161 of 2009 Shaheed Kanshi Ram Memorial...V/s State Information Commission has held;

"As per provisions of the Act, Public Information Officer is supposed to supply correct information, **that too, in a time bound manner.** Once a finding has come that he has not acted in the manner prescribed under the Act, imposition of penalty is perfectly justified. No case is made out for interference".

27. Yet in another case the Hon'ble Delhi High Court in W.P. (C) 3845/2007; Mujibur Rehman versus central information commission while maintaining the order of commission of imposing penalty on PIO has held;

"Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. **It is to ensure these ends that time limits have been prescribed, in absolute terms,**

**as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy.”**

28. Hence according to the ratios laid down in the above judgment the PIO has to provide correct information in a time bound manner is contemplated in the RTI Act. In the present case the PIO has repeatedly failed to provide the information within time frame. Such a conduct and attitude of Respondent PIO appears to be suspicious vis-à-vis the intend of the RTI Act and is not in conformity with the provisions of RTI Act.
29. The complainant has been made to run from pole to post in securing the said information. If the PIO at the initial stage itself had informed the said fact to the complainant or at least during the first appeal about the non traceability of the records, the harassment caused to the complainant in pursuing his application could have been avoided. Such an exercise was not done by the Respondent herein. In fact even the appellate authority proceeded on the footing that information was available.
30. The justification offered by the PIO for non compliance of section 7(1) of RTI act and order of first appellate authority, does not appears to be convincing as the same is not supported with cogent and convincing evidence. Hence I hold that PIO has miserably failed to show his bonafides. By subscribing to the ratios laid down by above courts, this commission comes to the findings that this is a fit case for imposing penalty on PIO.
31. In the present case Complainant has also prayed for compensation for the harassment and agony caused to him by the Respondent for not providing information within limitation period. Considering the provisions of the act, the said cannot be granted in the present proceedings being a complaint which is beyond preview of section 19 (8) (b) of RTI Act.

32. In view of above the present complaint is disposed with following order.

ORDER

- i. The Respondent No. 1 PIO Shri Venkatesh Sawant shall pay a amount of Rs.2000/- (Two thousand) as penalty for contravention of section 7(1), for not complying the order of First appellate authority and for delaying in furnishing the information.
- ii. Aforesaid total amount payable as penalty shall be deducted from the salary of PIO and the penalty amount shall be credited to the Government treasury at North Goa.
- iii. Copy of this order should be sent to the Director, Directorate of Municipal Administration, at Panajim and Director of accounts, North, Goa Panajim for information and implementation.

Proceedings 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