

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

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**Complaint No. 67/2018/SIC-I**

Shri Jawaharlal T. Shetye  
H.N. 35/A, Ward No, 11,,  
Near Sateri Temple, Khorlim,  
Mapusa-Goa -403 507

....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: 24/12/2018**

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

**ORDER**

1. The brief facts leading to present complaint are that the complainant Shri Jawaharlal Shetye by his application, dated 27/08/2018 filed u/s 6(1) of The Right to Information Act, 2005 sought for certain information as listed at point 1 to 13 therein pertaining to note dated 2/11/2005 received from then Law Minister regarding illegal construction at Braganza house. The Said information was sought from the Respondent No. 1 Public Information Officer (PIO) of the Mapusa Municipal Council.
2. It is the contention of the complainant that he did not receive any reply to his above application from the PIO nor any information was furnished to him.
3. As the information as sought was not furnished, the complainant filed first appeal to the Respondent No.2 being the First Appellate Authority on 28/09/2018.

4. It is the contention of the complainant that the Respondent No. 2 first appellate authority vide order dated 21/11/2018 directed the Respondent PIO to furnish the information to the complainant within 15 days free of cost.
5. It is the contention of the complainant that despite of the order of the first appellate authority no information came to be furnished to him as such he being aggrieved by action of PIO had to approached this commission in this complaint u/s 18 of the act on 24/12/2018 with the contention that the information is still not provided and seeking order from this commission to direct the PIO to furnish the information as also for other penal relief including compensation.
6. Notices were issued to the parties, pursuant to which complainant was present in person. Respondent PIO Shri Venkatesh Sawant appeared .
7. Five Opportunities were given to the PIO to file his reply to the said notice despite of that he failed to file any reply. Considering the above circumstances I hold that PIO had no reply to be filed and the averment of the complaint are not disputed.
8. Arguments of the appellant heard. Since PIO failed to appear and since no reply came to be placed on record by the PIO, the commission has no any option then to decide the present complaint on the merits, based on the available records in the file.
9. The complainant submitted that grate hardship has been caused to him in pursuing his application before the different authorities. He further submitted that the Respondent PIO did

not take diligent steps in discharging their responsibilities under the RTI Act. It is his contention that he had sought the said information in the larger public interest in order to expose the irregularities and illegalities committed by the public authority concerned herein.

10. I have gone through the records available in the file also considered the submission of the complainant herein.
11. 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.
12. 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.

13. *Section 18 of the act reads;*

***Powers and functions of Information Commission – (1)***

Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,-

- (a) Who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information officer as the case may be has refused to accept this or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section 91) of section 19 or the Central Information Commission or the State Information Commission, as the case may be .
- (b) Who has been refused access to any information requested under this Act;**
- (c) Who has not been given a response to a request for information or access to information within the time limit specified under this Act;**
- (d) Who has been required to pay an amount of fees which he or she considers unreasonable;
- (e) Who believes that he or she has been given incomplete, misleading or false information under this Act; and
- (f) In respect of any matter relating to requesting or obtaining access to records under this Act.

14. Thus the Act empowers the commission to inquire in the complaint which involves only the cases as contained at clauses (a) to (f) above.
15. The complainant filed application under section 6(1) of the RTI Act on 27/8/2018. Under section 7(1) of the RTI Act, the PIO is required to respond the same on or before the 30 days. In the present case it is found that the PIO is not responded to the said application of the complainant within the said stipulated period either by furnishing the information or rejecting the request. It is also not the case of PIO that the information has been furnished to the complainant or that he has responded to his application. The PIO has also not given explanation for not responding the said application.
16. The first appeal filed by complainant on 28/9/2018 which was disposed on 20/11/2018. During the intervention period of the first appeal also no bonafides have been shown by PIO to furnish him the information. The records reveals that after hearing both the parties the order was passed by the first appellate authority directing the PIO to furnish the information within 15 days. It is also not the case of PIO that he has complied the order of First appellate authority and information had been provided to the complainant.
17. 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.”

18. 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.
19. The Hon’ble High Court of Punjab and Haryana. In Civil Writ Petition No.14161of 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”.
20. 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."**

21. 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.
22. The PIO 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 a common men which is socially abhorring and legally impermissible.
23. In the above given circumstances I find that this is a fit case for imposing penalty on PIO. Hence 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