

**GOA STATE INFORMATION COMMISSION**  
Kamat Towers, seventh Floor, Patto, Panaji, Goa

**Shri Prashant S. P. Tendolkar,**  
State Chief Information Commissioner

**Complaint No.01/2019/CIC**

Shri Jawaharlal T. Shetye,  
H. No. 35/A, Ward No. 11,  
Khorlim, Mapusa Goa 403507.

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**Appellant**

**V/s**

- 1) Public Information Officer,  
Shri Venkatesh Sawant,  
Mapusa Municipal Council,  
Mapusa - Goa. 403507
- 2) First Appellate Authority,  
The Chief Officer,  
Shri Clen Madeira  
Mapusa Municipal Council,  
Mapusa -Goa. 403507

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**Respondents.**

**Filed On: 04/01/2019**

**Disposed On: 16/09/2019**

**O R D E R**

- a) The Complainant herein by his application dated 28/09/2018 filed u/s 6(1) of the Information Act 2005 (Act) sought certain information from the respondent No.1, PIO under several points therein.
- b) The said application was not decided to by the PIO with time and such deeming the same as refusal complainant filed first appeal to the respondent no.2.
- c) The First Appellate Authority (FAA) by order, dated 05/12/2018, allowed the said appeal and directed PIO to furnish the information. In spite of the said order the complainant has not been furnished with information and

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hence the complainant has landed before this Commission by way of complaint u/s 18 of the act.

- d) Considering the averments of the complainant, notice was issued to the PIO to show cause as to why penalty as contemplated u/s 20(1) and/or 20(2) of the act should not be initiated against him. Pursuant to which PIO, Shri Venkatesh Sawant appeared and filed reply to the complaint.
- e) It is according to PIO, Shri Sawant that the information at serial No.1 to 4 was pertaining to another PIO viz Smt. Resha Raut Desai and that at point (5) pertains to him.
- It is further according to said PIO, Shri Venkatesh Sawant that he has called complainant for inspection of records and that appellant inspected accordingly on 06/05/2019. According to him he has issued memo to the deemed PIO.
- f) In the course of proceedings Smt. Resha Raut Desai also filed reply. It is according to her that she has sought assistance from Ms. Siddhi Kavlekar and Shri Vinay Agarwadekar on 04/10/2018. Copy of the dispatch register of said memo alongwith acknowledgement of the same by said persons is produced on record. Based on said plea, notices were issued by this Commission to Ms. Siddhi Kavlekar and Shri Vinay Agarwadekar.
- g) Said Shri Vinay Agarwadekar filed his reply on 26/08/2019. It is according to him that the information in the form of inspection is already issued. Information to the points (1) to (4) in the form of copies is furnished to complainant on 25/06/2019.

It is further according to him that every week there are appeals and PIO and APIO has to remain busy to prepare reply to RTI and that he has to also take care of court matters

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and other related things and has to remain busy all through out. It is an account of this that he could not respond in time and that delay was not voluntary. He has also filed copies of the purported information.

- h) Said another deemed PIO, Ms. Siddhi Kavlekar has also filed her reply. The said reply is also identical in nature. Both the deemed PIOs prayed for a lenient approach while considering this complaint.
- i) Copies of both the replies were furnished to the complainant. Said plea of deemed PIO is not controverted/rebutted by the complainant. The submission of Shri Vinay Agarwadekar was heard. Ms. Siddhi Kavlekar remained absent for hearing.
- j) Considering the records, it is not in dispute that the application was not decided in time. U/s 19(5) of the act the onus to prove that the denial was bonafied was on the PIO. In the present case it is further not in dispute that both PIOs have sought assistance from Ms. Siddhi Kavlekar and Mr. Vinay Agarwadekar. The documents supporting seeking of such assistance is on record. However said, persons, who are the deemed PIOs under the act were not arrayed as parties to the first appeal.
- k) This commission takes a serious note of the fact that though PIO, Shri Sawant was notified in the first appeal neither he nor other PIO, Smt. Rashmi Raut Desai informed said authority regarding seeking assistance from Ms. Kavlekar and Mr. Agarwadekar, apparently to shelve them from punitive actions. This commission deprecate such action on their part. Had they been deligent, the deemed PIO's could have been questioned herein for their lapses.

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- l) Considering the fact that the present proceedings is a complaint, requiring decision only on the point of penalty, this commission cannot intervene on the point of ordering the information. As the deemed PIO were deprived of a forum i.e the FAA to prove bonafides in non furnishing information, this commission cannot deal with the same in this complaint. Any orders granting penalty against deemed PIO may result in violation of principals of natural justice.
- m) Considering the peculiar circumstances this commission hereby warns the PIO Shri Venkatesh Sawant and Smt. Resha Raut Desai to be deligent hence forth and deal with the RTI related matters with the required sanctity. They are further warned that in case any assistance is sought from any other officer in furnishing information the same should be brought to the notice firstly of the FAA so that such deemed PIO's are arayed as parties thereto.

Commission makes it clear that failure on the part of PIO's to report the fact of seeking assistance from other officer before the FAA shall be deemed as a lapse under the act and may result in recommending a disciplinary proceedings against PIO for obstructing furnishing of information.

- n) Commission also takes a serious view of the evasive grounds as raised by the deemed PIO, Ms. Sidhi Kavlekar and Shri Vinay Agarwadekar. The grounds put forth for not furnishing the information to PIO, inspite of issuing memo to them are not convincing and after thought. However on a limited point that they could not avail of opportunity to discharge their onus u/s 19(5) of the act before the FAA, a linient view

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is adopted. It is made clear that under the act an officer from whom assistance is sought u/s 5(4) steps in the shoes of PIO and is liable as PIO also for penalty.

- o) With the above observations the notices dated 18/01/2019 and 24/07/2019 issued by this commission stands withdrawn.

However this order shall not effect the right of the respondent authority viz. Mapusa Municipal Council to initiate disciplinary proceedings if any against the deemed PIO Ms. Sidhi Kavlekar and/or Shri Vinay Agarwadekar for dereliction of duties and/or insubordination for not complying with the direction of the PIO, under their service conditions.

Order be communicated to parties.

Proceedings closed.

Sd/-

**(Prashant S. P. Tendolkar)**  
State Chief Information Commissioner  
Goa State Information Commission  
Panaji -Goa