

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

---

**Complaint No. 10/2019/SIC-I**

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

....Appellant

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

.....Respondent

**CORAM:**

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

**Filed on:06/02/2019**

**Decided on: 17/04/2019**

**ORDER**

1. The brief facts leading to present complaint are that the complainant Shri Jawaharlal Shetye by his application, dated 12/9/2018 filed u/s 6(1) of The Right to Information Act, 2005 sought for certain information from the Respondent No. 1 Public Information Officer (PIO) of the Mapusa Municipal Council as listed at point No. 1 to 4 therein pertaining to representation dated 20/6/2016 made by the Mapusa peoples union to the Chief officer of Mapusa Municipal council with a submits new daily vendors vegetable market constructed by Mapusa Municipal council has been sold to migrants by the Mapusa Municipal councilor in connivance with the ex-Chairperson and the chairman of Market Committee.
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. It is the contention of the Complainant that as the information as sought was not furnished, he filed first appeal on 15/10/2018 to the Respondent No.2 Chief Officer of Mapusa Municipal Council being the First Appellate Authority.
4. It is the contention of the complainant that the Respondent No. 2 first appellate authority vide order dated 5/12/2018 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 6/2/2019 with the contention that the information is still not provided deliberately with malafide intention. The complainant herein have prayed for imposing penalty in terms of section 20(1) and 20(2) of RTI Act against the PIO Shri Venkatesh Sawant and for compensation .
6. Notices were issued to the parties, pursuant to which complainant was present. Respondent PIO Shri Venkatesh Sawant was present along with Advocate Matlock D'Souza .
7. Reply filed by Respondent PIO on 2/4/2019.
8. Arguments were advanced by both the parties.
9. It is the case of the complainant that respondent PIO as usual has once again has ignored to comply with the direction of his higher authority thereby he has committed the act of disobedience and behaved in a manner unbecoming of a Government /public servant and hence he is liable for penal action under the provision of RTI Act 2005. It was also submitted that he is a senior citizen and grate hardship, mental

agony, monetary loss has been caused to him in pursuing his application before the different authorities and on that ground a compensation was sought.

10. The Respondent vide his reply so also the Advocate for respondent during his argument submitted that the complainant is a chronic litigant and has been filing time and again RTI application which are hampering the work timing of PIO and also the regular work. It was further submitted that almost every week there are appeals preferred and that respondent has to file reply to the same and also attend the hearings. It was further submitted that the complainant has been abusing the said system and has rather targeting the process of RTI's by keeping on filing various RTI's against the Mapusa Municipal Council. It was further submitted that due to the filing of multiple application, complaints and appeals by the complainant, the functioning of the Mapusa Municipality gets hamper. It was further submitted that almost every second day the PIO is in the office of Information Commission for matters either appearing or preparing replies for appeals or complaints, penalty proceedings to be filed before the commission. It was further submitted that the complainant has been filing all such applications with such sinister motive of hampering the functioning of the Municipality and to harass the Mapusa Municipality and in the process the staff of Mapusa Municipal have been frustrated due the filing of so many RTI application by the appellant mostly on the same or similar subject and hence the complainant has to be black listed for filing so many RTIs, 1<sup>st</sup> appeals and 2<sup>nd</sup> appeals and it was further submitted that the complainant never initiated any proceedings against the Municipality on any information received before any court of law and therefore cannot be aggrieved party and as such fine has to be imposed on a complainant for filing so many

application, appeals, complaints and penalties proceedings. It was further submitted that complainant has been vindictive in his approach and he is only seeking penalties against the respondent and the prayers are a clear indications that the complainant is trying to harass the respondent PIO . It was further submitted that the PIO has acted in good faith and there are no malafide on his part. It was also submitted the complainant being a retired person has not disclosed how he has income to file so many appeals, applications, complaints etc.

11. I have gone through the records available in the file, considered the submission of Respondent PIO and also the averment made in the memo of complaints.

12. *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 (1) 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.
13. Thus the Act empowers the commission to inquire in the complaint which involves only the cases as contained at clauses (a) to (f) above.
14. 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. It is seen that as per the records the application dated 12/9/2018 was filed and received by the office of respondent no.1 on 12/9/2018. U/s 7(1) of the Act the PIO is required to respond the same within 7 days from the said date. The Respondent PIO have not placed on records and documentary evidence of having adhere to section 7 of RTI Act. 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.
15. The respondent No.2 FAA in his order dated 5/12/2018 has also observed that no information was provided to the complainant by the PIO till the date of order. On perusing the order of FAA it reveals that the PIO was present during the proceedings and the order was passed in his presence and as such the respondent PIO was aware of the order passed and directions issued to him

for furnishing information within 15 days. The respondent PIO has not produced any documents on record of he having complied with the order of respondent No.2 FAA. The contention of the appellant that his RTI application was not responded within 30 days and PIO having failed to comply with the order dated 5/12/2018 have gone undisputed and unrebutted. The information still not furnished to the complainant till date. During the intervening period of 1<sup>st</sup> appeal also no bonafides have been shown by the PIO to furnish the information to the complainant. There is a delay in furnishing information.

16. 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.
17. 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.

The Respondent PIO cannot make a grievance due to the filing of first and second appeals lots of his time has been wasted in appearing before first and second appellate authority. The same cannot be considered as the Respondent PIO is himself is

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.

18. 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 a intention of paralyzing the functioning of Municipality due to some personal enimity, 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.
19. 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.”

20. 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.
21. 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”.
22. 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."**

23. Hence according to the ratios laid down in the above judgment the PIO has to provide correct information in a time bound manner as contemplated under 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.
24. 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.
15. 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.
25. In the above given circumstances, considering the provisions of section 18 of RTI Act, 2005 and the ratio laid down by above courts, 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 Chief Officer of Mapusa Municipal Administration, at Mapusa 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

