

**GOA STATE INFORMATION COMMISSION**

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty Case No. 14/2019

In

Appeal No. 32/2019/SIC-I

Mrs. Nicladina A. Fernandes e Mello,  
H. No. 1309, Villa Dina,  
Damon-East, Raia, Salcete-Goa

.....Appellant

V/s

1. The Public Information Officer (PIO),  
Office of the Mamlatdar of Salcete,  
Margao, Goa.
2. First Appellate Authority (FAA),  
Deputy Collector and SDO,  
Salcete, Margao-Goa.

....Respondents

**CORAM:**

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

**Decided on: 25/04/2019**

**ORDER**

1. This Commission Vide order dated 25/03/2019, while disposing the above appeal directed Public Information Officer (PIO) to furnish full and complete information at point no. 1, 2, 7 to 10 as sought by her vide her application dated 11/09/2018 and also to furnish copies of transfer application transferring point at sr. no. 3,4,5, and 6 of her application to Town and Country Planning Department u/s 6(3) of RTI Act, 2005. Vide said order also the PIO was directed to showcause as to why penal action as contemplated u/s 20(1) and 20 (2) of the Right to Information Act, 2005 should not be initiated against him or her for not responding the application within 30 days time as contemplated under section 7(1)of Right To Information Act, 2005 (RTI Act), for not complying the order passed by Respondent no. 2, First Appellate Authority (FAA) dated 29/11/2018 and for delay in furnishing the information.
2. In view of said order passed by this Commission on 25/03/2019, the proceedings should converted into penalty proceedings .

3. In pursuant to the said order showcause notice was issued to then PIO on 27/03/2019.
4. In pursuant to the said showcause notice, then PIO Shri Joao B. Fernandes appeared and filed his reply to showcause notice on 8/04/2019 alongwith supporting documents. Additional reply also came to be filed by PIO on 25/04/2019 alongwith enclosure. The copy of both the replies were furnished to the appellant who was present during the penalty proceedings.
5. Respondent PIO admitted of having received the application of the appellant dated 11/09/2018 by the office of Mamlatdar, Salcete on 11/09/2018 thereby seeking information on 10 points pertaining to the memorandum vide No. SDO/SAL/Illeg-Conv/7340/2017/3896 dated 09/06/2017 issued by the Deputy Collector and SDO, Salcete, Margao-Goa under the subject "*Landslide due to excessive hill cutting to make plots in survey No. 215/1 of village Rai taluka Salcete Goa*". So also fairly admitted the delay in responding the same. However it is the case of the PIO that the same was not intentional and deliberate.
6. It is contention of the PIO that Mr. Rammurthy Dhuri, Awal Karkun of the Office of Mamlatdar of Salcete was acting on the said memorandum dated 9/06/2017 issued by Deputy Collector and SDO, Salcete and also on the memorandum dated 21/06/2017 issued by then Mamlatdar Shri Vishal C. Kundaikar to Talathi of Rai. It was further contended that Talathi of Raia vide his letter dated 18/07/2017 had submitted his report to Mamlatdar of Salcete which was also marked to Shri Dhuri.
7. It was further contended that the copy of the RTI application was given to Awal Karkun, Mr. Rammurthy Dhuri by the dealing clerk and he vide memorandum dated 27/09/2018 also forwarded copy of the application dated 11/09/2018 received from the appellant to

Shri Rammurthy Dhuri directing him to submit the information urgently within time period for onward submission to the appellant but the said Shri. Dhuri has not given any information or related documents despite of having the said available in the records.

8. It was further contended that he was transferred to Canacona and the present Mamlatdar Mr. Prataprao P. Gaonkar joined with effect from 22/02/2019 and he directed Circle Inspector to take the search of cupboards of Mr. Dhuri in order to trace out the said file and accordingly search was made and the files were traced and then the information was provided to the appellant on 12/03/2019 by Register A. D. It was further contended that the Showcause notice dated 8/03/2019 was issued to Shri Rammurthy Dhuri, Awal Karkun by the Mamlatdar of Salcete to which he filed his reply on 11/03/2019 which was not satisfactory.

9. I have scrutinized the records available in file so also considered submission of PIO. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005:-

a. The Hon'ble High court of Bombay , Goa bench at Panaji in writ petition No.205/2007 ; Shri A A Parulekar v/s Goa State information commission has observed

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

b. The Delhi High Court, in writ petition (C)11271/09; in case of Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's has held that ;

*"The legislature has cautiously provided that only in cases of **malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information***

*or destroys the information, that the personal penalty on the PIO can be imposed.* This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity.** Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute."

- c. Yet in Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another, the Hon'ble court held;

"The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to obtain. **It is not every delay that should be visited with penalty. If there is delay and it is explained, the question will only revolve on whether the explanation is acceptable or not.** I there had been a delay of year and if there was a superintendent, who was prodding the public information officer to act, that itself should be seen a circumstance where the government authorities seemed reasonably aware of the compulsions of time and the imperatives of providing information without any delay. **The 2<sup>nd</sup> respondent has got what he has wanted and if**

**there was a delay, the delay was for reasons explained above which I accept as justified."**

d. Yet in another decision, the Hon'ble High Court of Punjab and Haryana, Ramesh Sharma and others v/s the State Commission and others decided on 8/2/2008 reported in AIR 2008, P and H page 126 has held ;

"if the information is not furnished within the time specified by sub section (1) of section 7 of the Act then under sub section(1) of section 20, Public authority failing in furnishing the requisite information could be penalised. ***It has further held that it is true that in case of intentional delay, the same provision could be invoke but in cases were there is simple delay the commission had been clothed with adequate Powers".***

10. Hence according to the said judgments penalty under sub-section (1) of the section 20 could be imposed only in the case where there is repeated failure to furnish the information and that too without any reasonable cause .
11. In the back ground of above ratio is laid down by the Hon'ble High Court, the point arises for my determination is
  - a) Whether the delay in furnishing information was **deliberate** and **intentionally?**
12. In the present case PIO have fairly admitted of not replying within 30 days and tried to justify the reasons for not responding or not providing the information within 30 days time so also for non compliance of order of FAA in time. The PIO have placed on record the memorandum dated 27/09/2018 issued by him to the Awal Karkun, Shri Rammurthy Dhuri directing him to submit the information. There is also no record to show that the order of the FAA was communicated to the then PIO, Shri Joao B. Fernandes and despite of the same he did not make attempt to secure the

information on the contrary it could be gathered from the perusal of the showcause notice dated 8/03/2019 issued by the present PIO/Mamlatdar of Salcete, Shri Prataprao P. Gaonkar to Shri Rammurthy Dhuri, that the said matter was dealt by Shri Rammurthy Dhuri, A. K and he failed to provide the required information to the appellant under the RTI Act inspite of receiving order dated 29/11/2018 passed by the FAA. If one peruse the reply dated 11/03/2019 given by the Shri Rammurthy Dhuri to the said showcause notice, it could be seen that he had admitted that he was dealing with RTI application 26/10/2018 filed by appellant and the information received and submitted to him by the Talathi of Raia vide letter dated 18/07/2017.

13. Hence it appears from the said facts that Shri Rammurthy Dhuri was holding and in possession of the said information and the then PIO had sought his assistances and had directed to submit the said information for the purpose of onward submission to appellant and hence for failure and lapses on the part of Shri Rammurthy Dhuri, the then PIO cannot be solely held responsible. However, in such circumstances it is equally duty of PIO being superior officer to view such conduct and attitude of his subordinate seriously and to deal the same in accordance with law.
14. Needless to say that if the correct and timely information was provided to the Appellant. It would have saved valuable time and the hardship caused to her in pursuing the said Appeal before the different Authorities. It is quite obvious that the Appellant has suffered lot of harassment and mental torture and agony in seeking information under the RTI Act which is denied to her till this 2<sup>nd</sup> appeal was filed. If the PIO had given prompt and correct information such harassment and detriment could have been avoided.

15. The replies and the explanation given by the PIO appears to be convincing and probable as the same is supported by documentary evidence. There is no cogent and convincing evidence on record attributing malafides on the part of the then PIO .
16. In view of ratios laid down by the various above High courts and in view of above discussion, I am of the opinion that this is not a fit case warranting levy of penalty on the PIO. Consequently the show cause notice dated 27/03/2019 issued to then PIO Shri Joao B. Fernandes stands withdrawn. However the PIO is hereby directed to be vigilant henceforth while dealing with the RTI matters and if any lapses found in future shall be viewed seriously.

Penalty proceedings stands closed

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Sd/-

(Ms. Pratima K. Vernekar)  
State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa