

**GOA STATE INFORMATION COMMISSION**

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 17/2019  
In Appeal No. 01/2019/SIC-I

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

....Appellant

V/s

- 1) The Public Information Officer (PIO),  
Mapusa Municipal Council, Mapusa Goa-403507
- 2) First Appellate Authority (FAA),  
Chief Officer, Mapusa Municipal Council,  
Mapusa-Goa.

.....Respondents

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

**Decided on: 30/04/2019**

**ORDER**

1. This Commission vide order dated 26/03/2019, while disposing the above appeal directed the Public Information Officer (PIO) to comply with the order passed by the first appellate authority dated 21/11/2018 and to provide the available information to the appellant including inspection as sought by the appellant vide application dated 13/8/18, within 20 days from the date of receipt of order by him. Vide said order the commission had also directed PIO to showcause as to why no penal action as contemplated u/s 20(1) and 20(2) of the Right to Information Act, 2005 should not be initiated against him/her for contravention of section 7(1) of RTI Act, for not complying the order passed by the First Appellate Authority (FAA) within time and for delay in furnishing the information .
2. In view of said order passed by this Commission on 26/03/2019, the proceedings should converted into penalty proceedings .
3. Accordingly showcause notice was issued to PIO on 01/04/2019. In pursuant to the showcause notice Shri Vyankatesh Sawant appeared

and filed his reply on 25/4/2019 and submitted to consider his reply as his arguments .

4. Vide said reply dated 25/4/2019 PIO admitted that he was officiating as PIO on the date of application and also when the order was passed by the first appellate authority. He also fairly admitted delay in furnishing the information to the appellant however according to him it was not intentional and deliberate. It is his contention that he could not furnish the information in time due to non submission of information by the deemed PIO . Vide said reply it was further contended that he was holding charge of Municipal Engineer, Grade III and Grade II and the PIO's duty is addition to those two charges and the marginal delay in furnishing information to the appellant was due to over burden of work. He further contended that he has refunded Rs 2000/- to the appellant and in support his said contention he relied upon cash memo issued by Mapusa Municipal Council . He submitted that difficulties to furnish the information in time were genuine and were not to cause any hardship or inconvenience to the appellant and on that ground he sought for leniency .
5. I have scrutinized the records available in file and also considered the reply dated 25/04/2019 filed by the PIO in the present penalty proceedings .
6. From the records it could be seen that in pursuant to the letter of the PIO dated 10/09/2018 , the appellant had deposited an advance of Rs. 2000/- towards the said information despite of same no information came to be provided to the appellant .
7. During the intervening period of 1<sup>st</sup> appeal also no bonafides have been shown by the PIO in furnishing the information to the appellant.

8. The Respondent No.2 FAA in his order dated 21/11/2018 has also observed that no information was provided to the appellant by the PIO and as such had directed PIO to furnish the same free of cost and to refund the money. On perusing the order of FAA it reveals that the APIO, Shri Vinay Agarwadekar was present during the proceedings and the order was passed in his presence and as such the Respondents PIO and APIO was well aware of the order passed and directions issued to them for furnishing information. 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 in time. The PIO has also not placed on record any correspondence made by him to the appellant in pursuant to the said order. No reasons whatsoever nature were conveyed either to the first appellate authority nor to the appellant herein why he could not comply the said order in time. The respondent PIO has not produced any documents on record of the 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 24/10/2018 have gone undisputed and unrebutted .
9. Again no bonafides have been shown by the PIO in furnishing the information during the proceedings before this commission too and as such this commission vide order dated 26/3/19 had directed to comply with the order of FAA and to provide available information within 20 days from the receipt of the order . Such an conduct by PIO is obstructing transparency and accountability appears to be suspicious and adamant vis-a-viz the intent of the Act.
10. The Respondent during the present proceedings for the first time have come out with stand that the deemed PIO had not placed the requisite file/information before him for onward transmission to the appellant. Such a stand was never taken by the Respondent PIO at

the initial stage nor before the first appellate authority. No documents have been produced on record by the PIO of having sought assistance of the said deemed PIO nor has given or mentioned his name in his reply nor any documents have been placed on record of having reported such a conduct on the part of said deemed PIO to his superior officers. Hence the above contention of the PIO cannot be taken into consideration and cannot be looked into as the same is not supported by any documents .

11. 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.”

12. 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”.

13. 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.**”

14. The Hon'ble Bombay High Court Goa bench in writ petition No.304/2011 Johnson V. Fernandes V/s Goa State information commission; AIR 2012 Bombay 56 has observed, at para 6

“Nothing prevented the petitioner for furnishing the information to Respondent de-hors the appeal. In fact, if the petition is intended to furnish the information to Respondent (information seeker) he could have communicated it without waiting for Respondent No. 2 (appellant) to file an appeal.”

15. 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.

16. The facts of the records shows that there is a delay in furnishing the information and the PIO has repeatedly failed to provide information within time frame despite of appellant depositing fees.

The reasons and the say filed by the PIO to the Showcause notice does not appear to be probable and convincing as it is not supported by cogent and convincing evidence.

17. The appellant herein have been made to run from pillar to post in pursuing his RTI Application. If correct and timely information provide to the appellant it would have saved valuable time and hardship caused to the appellant. Such harassment & Detriment caused to appellant could have been avoided.
18. In view of above discussion, facts and circumstances of the present case and by subscribing to ratio laid down by above Hon'ble courts, I am of the opinion that this is an fit case for imposing penalty on PIO. Hence the following order.

### **ORDER**

- i) The Respondent Public Information Officer, Shri Vyankatesh Sawant is hereby directed to pay a sum of Rs. 2,000/- (Rupees Two Thousand Only) as penalty for a contravention of 7(1) of RTI Act, 2005 for not complying the order of First Appellate Authority and for delay in furnishing the information. The penalty amount shall be credited to the Government Treasury.
- ii) The copy of the order shall be sent to the Director of Accounts, Panaji and to Chief Officer of Mapusa Municipal Council Mapusa Goa for information and implementation.

With the above directions the above penalty proceedings stands 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