

**GOA STATE INFORMATION COMMISSION**

Kamat Tower, Seventh Floor, Patto Panaji-Goa

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Penalty 19/2019  
In  
Appeal No. 38/2019/SIC-I

Shri Santana Piedade Afonso, H. No. 263,  
Comba Central, P. O. Cuncolim,  
Salcete, Goa, 403703.

....Appellant

V/s

1) Shri Joao B. Fernandes,  
Public Information Officer (PIO),  
Office of the Mamlatdar of Salcete, Taluka,  
1<sup>st</sup> floor, Mathany Saldanha,  
Administrative Complex, Margao,  
Salcete, Goa.

2) First Appellate Authority (FAA),  
Shri Uday Naik, Dy. Collector and SDO,  
1<sup>st</sup> floor, Mathany Saldanha,  
Administrative Complex, Margao-Goa.

.....Respondents

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

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

**ORDER**

1. This Commission Vide order dated 28/03/2019, while disposing the above appeal had directed Public Information officer (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 28/3/2019, the proceedings should converted into penalty proceedings .

3. Accordingly showcause notice was issued to PIO on 03/04/2019. In pursuant to the showcause notice smt sharad Naik appeared on behalf of then PIO Shri Joao Fernandes and placed on record reply dated 10/4/19 of then PIO to the show cause notice. PIO Shri Joao Fernandes appeared on 30/4/2019 and submitted to consider his reply as his argument.
4. I have scrutinized the records available in file and also considered the reply dated 10/4/19 filed by the PIO in the present panelty proceedings .
5. From the records it could be seen that the RTI application dated 20/9/19 filed by the appellant was received in the office of Respondent PIO on 26/9/18. Under sub section (1) of section 7 of the RTI Act,2005 the PIO is required to respond the same within 30 days from the receipt of the same. There are no records produced by the then PIO that the same is adhere too.
6. The first appeal in terms of section 19(1) came to be filed by the appellant on 2/11/18. Notice was issued by the first appellate authority on 13/11/2018 to both the parties of the hearing fixed by him on 20/11/18. 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. So also the records/roznama of the proceedings of 1 st appeal shows that the PIO did not appear and filed any say to the proceedings
7. The Respondent No.2 FAA in his order dated 13/12/2018 has also observed that the PIO failed to comply the provisions of sub-section (1) of section 7 of RTI Act and also came to the findings that no information was provided to the appellant by the PIO and as such had directed PIO to furnish the same free of cost within 15 days from the date of order . 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.

8. Vide said reply dated 10/4/2019 PIO admitted of having received the RTI application of the appellant from the PIO and additional collector-II, South, Margao vide letter dated 26/9/2018 made in terms of section 6(3) of RTI Act, 2005 directing to furnish information at point No. a (i partly) and (b) also admitted of having passed the order by the first appellate authority. However he denied any malafides on his part and contented that the information sought by the appellant was not pertaining to his office but rather was pertaining to Establishment section of Collectorate, South, Margao and the same was brought to the notice of appellant.
9. Thus 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 13/12/2018 have gone undisputed and unrebutted.
10. The Respondent during the present proceedings for the first time vide his reply dated 10/4/2019 have come out with an only stand that the information sought by appellant was not pertaining to his office but was pertaining to Establishment section of Collectorate of south, Margao but the fact remains that the said information was available and was existing in the records of office of Mamlatdar of salcete, Margao and as such the present PIO shri Prataprao P. Gaunker during the second appeal proceedings before this commission provided the information to the appellant on 28/3/2019. Further though PIO have claimed that he had brought to the notice of appellant that information is pertaining to Establishment section of Collectorate South, however no any documents have been produces on record in support of his above contention. Hence the contention of PIO/justification given by the PIO does not appear to be convincing and satisfactory.

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 the information was sought on 20/9/18 and has been furnished on 28/3/19. There is a delay in furnishing the information and the then PIO Shri Joao Fernandes has repeatedly failed to provide information within time frame despite of same was available and was existing in the records of the office of mamlatdar of salcet. 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 Joao B. Fernandes 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, 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, south at Margao and to collector of south Goa ,Margao-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