

**GOA STATE INFORMATION COMMISSION**

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 05/2019  
In Appeal 294/2018/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: 25/04/2019**

**ORDER**

1. This Commission Vide order dated 18/01/2019, while disposing the above appeal directed to then Public Information Officer (PIO) 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/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 18/01/2019, the proceedings should converted into penalty proceedings .
3. Accordingly showcause notice was issued to PIO on 21/01/2019. In pursuant to the showcause notice Shri Venkatesh Sawant appeared alongwith Advocate Matlock D'Souza and filed reply on 20/3/2019 and also additional reply on 29/03/2019.
4. Vide said reply dated 20/3/2019 PIO contended that information at point No. II (a) , (b) and (c) could not be furnished in time due to non submission of information by contract bases Jr. Engineer Tukaram Kaskar. Vide said reply it was further contended that the

information alongwith the documents were issued to the appellant vide letter dated 21/12/2018 and the information at point No. 1 (g) was transferred u/s 6(3) to the PIO of Mapusa Police station vide letter dated 20/12/2018. 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.

5. The Respondent PIO vide additional reply dated 29/3/2019 contended that the appellant Shri J.T. Shetye 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 appellant 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 appellant , 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 appellant 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 Municipality have been frustrated due to the filing of so many RTI application by appellant mostly on the same or similar subject and hence the appellant Shri J.T. Shetye has to be black listed from filing so many RTIs 1<sup>st</sup> appeals and 2<sup>nd</sup> appeals. It was

further submitted that the appellant 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 appellant for filing so many RTI application, appeals, complaints and penalties proceedings. It was further submitted that appellant has been vindictive in his approach and he is only seeking penalties against the Respondent and the prayers are a clear indications that the appellant 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 that the appellant being a retired person has not disclosed how he has income to file so many appeals , applications, complaints etc.

6. I have scrutinized the records and also considered the submission of parties.
7. It is seen that as per the records the application dated 9/8/2018 was filed and received by the office of respondent no. 1 on 9/8/2018. U/s 7(1) of the Act the PIO is required to respond the same within 30 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 any valid explanation for not responding the said application.
8. The respondent No.2 FAA in his order dated 24/10/2018 has also observed that no information was provided to the appellant 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 7 days. The records show that the order was

passed by FAA on the undertaking given by the PIO to furnish the information within 7 days to the appellant . 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 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 .The information came to be provided to the appellant only on 21/12/2018 . 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 appellant. There is a delay in furnishing information. Such an conduct by PIO is obstructing transparency and accountability appears to be suspicious and adamant vis-a-viz the intent of the Act.

9. The Respondent during the present proceedings for the first time have come out with stand that the concerned Jr. Engineer on contract bases namely Tukaram Kaskar had not placed the requisite file/information before him for onward transmittion 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 Engineer nor any documents have been placed on record of having reported such a conduct on the part of Jr. Engineer Shri Tukaram Kaskar to his superior officers. Hence the above contention of the PIO cannot be taken as gospel truth.

10. The PIO have now 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 so also the constitution of India and the Right to information Act also guarantees and recognizes the right of a citizen to seek information and to prefer appeals.
11. The Respondent PIO also now cannot make a grievance due to the filing of first and second appeals lots of his time his wasted in appearing before first and second appellate authority and the same cannot be considered as the Respondent PIO is himself 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.
12. 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 enmity, 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 cogent and convincing evidence in support of his above contention.

13. 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."

14. 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".

15. 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.**”

16. 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.”

17. 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.

18. 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. 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 evidence. 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.

19. 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/- 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, 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