

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

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Penalty Case No. 06/2019  
In  
Appeal No. 280/2018/SIC-I

Shri Nikil M. Narvekar,  
H.No. 189/10 Durgawaddo,  
Duler Mapusa,  
Bardez Goa.

....Appellant

V/s

- 1) The Public Information Officer,  
Executive Engineer (RTI),  
Electricity Department,  
Vidhyut Bhavan, Panaji Goa.
- 2) First Appellate Authority,  
Superintending Engineer-II(N),Panaji,  
Electricity Department,  
Vidhyut Bhavan, Panaji Goa.

.....Respondents

**CORAM:**

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

**Decided on: 4/3/2019**

**ORDER**

1. The Commission while disposing the above Appeal vide order dated 1/2/2019 had directed to issue notice u/s 20(1)& 20(2) of the Right To Information Act, 2005 to the Respondent Public Information Officer (PIO) for contravention of section 7(1) of RTI Act 2005 and for delay in furnishing the complete information.
2. In view of the said order passed by this Commission on 1/2/2019, the proceedings should converted into penalty proceedings.
3. Accordingly showcause notice were issued to PIO on 11/02/2019.
4. In pursuant to the said notice, the PIO Shri Bharat Nigle appeared and filed his reply to showcause notice on 20/2/2019 alongwith supporting documents. The copy of the reply was furnished to the appellant .

5. 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 akin action under the criminal law. It is necessary to ensure that the failure to supply information is either intentional or deliberate."***

6. 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?
7. The Respondent PIO admitted of having received and inwards the application of the appellant dated 16/8/2018 in the main office (C.E.E.) and having forwarded to him on 17/8/2018 .
8. It is the contention of PIO that he verified and noticed that appellant had requested certain information of the Electricity Department which was voluminous and confusing in nature. It was also found that the appellant had partly requested the information of the Division VI, Mapusa.
9. It was contended that he had transferred the RTI application of the appellant to the Dy. Director(Administration), Office of Chief Electrical Engineer and also to PIO of Division VI, Mapusa vide letter dated 21/8/2018 assuming that administration section and Mapusa office would be custodian officer of the required information, and in support of his case he enclosed the letters made by him to the concerned offices.
10. It was further contended that the office of Superintendent (O.S.) (Estt.Section)vide letter dated 11/9/2018 furnished the information only at point No.10 and informed him that information for points 1 to 9 and 14 to 15 to be collected from Superintending Engineer, Circle I & II and was requested to collect the

information from Division VI for the point 16. In support of his above contention he replied upon the letter dated 11/9/2018 addressed to the PIO by Office Superintendent of electricity Department .

11. It is his contention that on the receipt of above letter he had put up urgent note dated 19/9/2018 to the office Superintendent (O.S) for confirmation and it was replied that the same can be directly obtained by the Superintendent Engineers directly from the Divisions under their jurisdictions .
12. It was further contended that in pursuant to the above directions, he vide letter dated 26/9/2018 transferred the RTI application to the superintendent Engineer, circle I and II for availing the information within their jurisdiction. And in support of his contention he relied upon the Xerox copy of the note and letter dated 26/9/2018 made by him to superintending Engineer circle - I(S)/II(N) of Margao and Panajim.
13. It was further contended that information at point No. 10 was furnished to the appellant vide letter dated 1/10/2018 and it was informed to him that the balance information will be furnished by the concerned offices as his application has been transferred for seeking information.
14. It was further contended that he vide letter dated 18/12/2018 again requested the concerned division to supply the information to his office on or before 27/12/2018 and he received information from Division I Panajim, Division III Ponda and Division XI Vasco which were furnished to appellant vide letter dated 3/1/2019 and in support of his case he relied upon respective letters addressed to the appellant furnishing the information .
15. He further contended that the reminder dated 3/1/2019 and second reminder dated 18/1/2019 were also sent to Division II, VI, VIII, IX, X, XIII, XV, XVI and XVII requesting to furnish the

information on top priority and on receipt of the information from Executive Engineer, Division XIII Kadamba was furnished to the appellant vide letter dated 16/1/2019 and the information received from the Executive Engineer, Division V and Division XV were furnished to the appellant on 23/1/2019 and the remaining information pertaining to Division II Margao, Division VI Mapusa, Division VIII Margao, Division IX Thivim, Division XIII Kadamba and Division XVII Mapusa were furnished to the appellant on 1/2/2019.

16. It is also the case of the Respondent PIO that he was holding charge of Executive Engineer(IPM) in addition to other major important sensitive charges. It is his contention that no permanent staff was posted to deal with the RTI work and only the service of LDC was at disposal only for half day and the despite of such difficulty he tried to secure the information and he further contended that the delay, if any, in providing information is neither deliberate nor intentional but due the factors mentioned by him .
17. I have considered the records available in the file and also submission of the Respondent PIO.
18. On perusal of the application dated 16/8/2018 filed u/s6 (1) of RTI Act by the appellant herein it is seen that voluminous information was sought by the appellant pertaining to entire Electricity Department of Goa on 16 points as listed therein in the said application. The said application was forwarded to the Respondent No. 1 herein on 17/8/2018 and he could verify the contents only on 20/8/2018 being 18<sup>th</sup> and 19<sup>th</sup> August being holidays. It is observed that the Respondent PIO had Promptly attended the said application and since the information was not available in his office he within a day, vide letter dated 21/8/2018 sought the assistance of Deputy Director (Administration) and the

PIO of Division VI Mapusa with a request to furnish the desire information to his office for onward submission to the appellant within a stipulated period. The records reveals that the various letters were made so also the reminders were send by PIO on the various dates to the concerned offices and on the receipt of the information the same are submitted to the appellant herein .

19. As per the RTI Act and also as per the ratios laid down by the Apex Court in case of Central Board of Secondary Education and Anr. Vs Aditya Bandopadhyay and others in civil Appeal No. 6454 of 2011 and (ii) the Delhi High Court in LPA 24/2015 & CM No.965/2015, the registrar Supreme Court V/S Comondore Lokesh K. Batra & others January 2016, the PIO is supposed to provide information as exist and as available on the records of Public authority and they are not required to collect or collate the same in the manner in which it is sought by the appellant ". In the present case the records reveals that since the information was not available in the office of respondent PIO , PIO had promptly taken every possible steps in securing the information and has put tremendous efforts in collecting the same from the respective offices for the purpose of onward submission to the appellant. Such a conduct and the gesture on the part of the PIO reflect his bonafides intention of furnishing the information to the appellant.
20. Though the information is furnished in piecemeal manner and not within 30 days time to the appellant, the PIO had tried to justify the reason for not responding or not providing the complete information within 30 days time. The explanation given by the PIO appears to be convincing and probable as the same was supported by documentary evidence. Considering all those circumstances, I find that the delay in furnishing information was not deliberate and intentional.

21. Never the less, the Delhi, High Court in case Registrar of Companies and others V/s Dharmendra Kumar Gard and Another's writ petition (C)11271/09 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, threat 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."**

22. Yet in another the Hon'ble Court of Punjab and Haryana in writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another.

"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. 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".***

23. In the light of discussion above and considering the provision of section 20 of the RTI Act, 2005 and the ratios laid down by the above courts, I find that the levy of penalty is not warranted in the facts of the present case.
24. Be that as it may, the present PIO Shri Rajiv Samant appeared on 4/3/2019 and submitted that the then PIO Shri Bharat Nigle has been retired on attaining the age of superannuation and he placed on record order dated 28/2/2019.
25. In the present case undisputedly the then PIO Shri Bharat Nigle has retired as such as of today is entitled for pension. Section (11) of pensions act so also section 60 (1) (g) of Civil procedure code grants immunity to the pension holder against its attachments.
26. The Hon'ble Apex court in appeal (civil) 1874 of 1999 Gorakh university and other V/s Shri Shilpa Prasad Nagendra and (ii) in civil appeal No. 6440/41 of 2008 Radhye Shyam Gupta V/s Punjab National Bank, has held that the benefits received under pension, gratuity by retired person are immune from attachment.
27. In the above given circumstances, the Showcasue notice issued to Bharat Nigle dated 11/2/2019 stands withdrawn.

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.

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