

**GOA STATE INFORMATION COMMISSION**

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

**Appeal No. 314/2019/SIC-I**

Shri Jawaharlal T. Shetye  
H.N. 35/A, Ward No, 11,,  
Near Sateri Temple, Khorlim,  
Mapusa-Goa -403 507.

....Appellant

V/s

1) The Public Information Officer (PIO),  
Main Engineer Gr-I (Denis D'Mello)  
Mapusa Muncipal Council,  
Mapusa-Goa – 403507.

2) First Appellate Authority (FAA),  
Chief Officer,(Mr. Clen Madeira)  
Mapusa Muncipal Council,  
Mapusa-Goa 403507

.....Respondents

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

Filed on: 11/11/2019

Decided on: 08/01/2020

**ORDER**

1. The brief facts leading to the second appeal are that the appellant in exercise of his right under section 6(1) of RTI Act, 2005, vide his application dated 9/8/2019 had sought from Respondent No.1 Public Information Officer (PIO) of Mapusa Municipal Council, Mapusa-Goa certain information on 5 points as stated therein in the said application mainly pertaining to Shri Nilesh Gadekar (temporary driver) and Shri Channappa G. Holeppanavar (Worker-cum-Sweeper).
2. It is the contention of the appellant that the respondent PIO failed to provide him information within stipulated time of 30 days and as such deeming the same as rejection, the appellant filed 1<sup>st</sup> appeal to Respondent no 2 chief officer of Mapusa Municipal council on 10/9/2019 being first appellate authority.
3. It is the contention of the Appellant that the Respondent No. 2 first

appellate authority, did not disposed his first appeal within stipulated time neither passed any order till date, as such he is forced to file the present appeal.

4. In the above background the appellant being aggrieved by action of PIO and of First Appellate Authority (FAA), has approached this commission in this second appeal on 11/11/2019 u/s 19(3) of the act with the contention that the information is still not provided and seeking order from this commission to direct the PIO to furnish the information as also for invoking penal provisions as against respondent PIO so also sought compensation for the detriment suffered by him at the hands of Respondents.
5. Matter was taken up on board and was listed for hearing and accordingly notices were issued to the parties. Appellant opted to remain absent for the proceedings. Respondent PIO Shri Diniz D'Mello appeared along with APIO Vinay Agarwadekar. The Respondent No.2 First Appellate Authority (FAA) opted to remain absent despite of due service of notice neither filed any reply to the proceedings.
6. Reply filed by respondent no. 1 PIO on 17/12/2019 thereby enclosing information. The copy of reply of the PIO alongwith the copies of information was collected by the appellant on 23/12/2019. Additional reply alongwith the enclosures was also submitted by the Respondent PIO on 27/12/2019 with the registry of this commission which was inwards vide entry No. 2007 dated 27/12/2019. The copy of the same could not be furnished to the appellant on account of his absence .
7. Respondent PIO Shri Deniz D'Melo submitted to consider his reply as his arguments.
8. Vide reply dated 17/12/2019 PIO contended that appellant had sought information in respect of letter No. 2/1/2007/DMA/RTI/1443

dated 8/7/2019 from DMA office and the efforts were made by him to trace out the concerned files/documents from the Administrative section and he vide his letter bearing No. Admin/RTI/6255/2019 dated 26/9/2019 had informed the appellant to collect the information as sought by him on the payment of requisite fees towards the Xerox charges. It was further contended that the appellant appeared on 30/9/2019 and paid an amount of Rs. 18/- vide receipt No. 12049 dated 30/9/2019 but failed to collect the said documents/information and also failed to carry out the inspection of the records as sought by him at point no. 3 .

9. It was further contended by PIO that the appellant is habitually filing the RTI application, first appeals and second appeals as such the Municipal staff and the PIO remain busy to sort out and to furnish information to the appellant.
10. It was further contended that the difficulties to furnish the information in time is genuine and not to cause any hardship or inconvenience to the appellant. He apologized for the delay caused in the matter and prayed to Condon the said delay.
11. The respondent PIO vide his additional reply dated 27/12/2019 submitted that the inspection of the file of Shri Channappa Gangappa Holeppanavar has been carried out by the appellant and has endorsed his signature of having carried the inspection on notesheet and in support of his contention he relied upon the said notesheet.
12. Since the information have now been collected by the appellant on 23/12/2019 and since he has carried out the inspection as sought by him at point no. 3 on 26/12/2019 as per his requirement, I find that no further intervention of this commission is required for the purpose of furnishing the information and hence the prayer (i) becomes infructuous.
13. With regards to other prayers which are nature of penalty and compensation, for the purpose of considering such liability interms

of section 20 of RTI Act, The Hon'ble High Court of Bombay, Goa bench at Panaji in writ petition 205/2007 ; Shri A.A. Parulekar v/s Goa State information commission has observed;

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

14. Hence according to the ratio laid down by above Hon'ble High Court, failure to supply the information should be either intentional or deliberate .

15. On perusal of the records, it is seen that the application dated 9/8/2019 was filed and received by the Office of Respondent PIO on 9/8/2019 itself. Under section 7(1) of the Act, the PIO is required to respond the same within 30 days from the said date i.e by 9/9/2019 The said was replied on 26/9/2019. There is marginal delay in responding the same. However on perusal of the said letter/reply, it is seen that there is no denial of information from PIOs side and in fact the Respondent PIO had offered him the information. The PIO in his reply before this commission have categorily submitted that the appellant failed to collect the said documents and to carry out the inspection. I have no hesitation in accepting the said contention of the Respondent PIO as the same has not been disputed and rebutted by the appellant herein.

16. The Hon'ble High Court of Bombay at Goa in writ petition No. 704/12; public authority V/s Yeshwant Sawant has held at para 6;

“ The imposition of such penalty is a blot upon the career of the officer at list to some extent ,in any case the information ultimately furnished though after some marginal delay in such circumstances, therefore, no penalty ought to have been imposed upon the PIO”.

17. Yet in another decision, the Hon'ble High Court of Bombay at Goa in writ petition No.488/11; Shivanand Salelkar v/s Goa state Information commission has held at para 5;

"The delay is not really substantial. The information was applied on 26/10/2009 and therefore the information had to be furnished by 25/11/2009. On 30/11/2009 complainant made his complaint and no sooner the petitioner received the notice of complaint, the petitioner on 15/1/10 actually furnished the information. If all such circumstances considered cumulatively and the law laid down by this court in the case of A A Parulekar (supra) is applied , then it does appears that there was no justification for imposing penalty of Rs 6000/- against the petitioner. "

18. May be the letter dated 26/9/2019 was not written within a period of 30 days requiring PIO to furnish the information but the facts remains that there was not denial of information by Respondent PIO and the information ultimately came to be collected by the appellant on 23/12/2019 and inspection was carried by appellant on 26/12/2019.

19. Further, The Hon'ble High Court of Delhi in Writ Petition (c) 3114/2007 ; Bhagat Singh V/s CIC has held that ;

" The petition has not been able to demonstrate that they malafidely denied the information sought therefore a direction to central information commission to initiate action on the section 20 of the act cannot be issued "

20. In the present case , the averments made by the Respondent PIO have gone undisputed and un-rebutted. There is no sufficient, convincing and cogent evidence on record produced by the

appellant attributing malafides on the part of Respondent PIO  
Hence in my opinion, considering the facts and circumstances of  
present case and by subscribing to the ratios laid down by the  
above courts, this commission is of the opinion that this is not a  
fit case warranting levy of penalty on PIO.

21. For seeking compensation, the burden lies on the claimant to produce evidence sufficient to grant compensation. In the present case as there is no evidence of whatsoever nature of the losses or detriment suffered by the applicant, as such compensation cannot be ordered.
22. In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following:

### **ORDER**

a) Since the information have now been collected by the appellant, no intervention of this commission is required for the purpose of furnishing the information and as such prayer (i) becomes infructuous.

b) Rest prayers are rejected.

The appeal proceedings stands closed.

Notify the parties.

Pronounced in the open court.

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