

**GOA STATE INFORMATION COMMISSION**  
Kamat Tower, Seventh Floor, Patto Panaji-Goa

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Penalty 31/2019  
In  
Appeal No. 141/2019/SIC-I

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

....Appellant

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

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

Decided on: 17/02/2020

**ORDER**

1. This Commission Vide order dated 28/06/2019, while disposing the above appeal directed the Respondent No.1 Public Information Officer (PIO) to provide inspection of the files/documents/records as sought by the appellant vide his application dated 18/2/2019, 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, and for delay in furnishing the information .
2. The commission vide said order also issued notice to Respondent no.2 First Appellate Authority to showcause as to why the violation of the provisions of RTI Act, 2005 by him, non

compliance of instructions issued to him by the Director of Urban Development and the dereliction of duties should not be reported to his parent Department i.e Personnel Department, and to the office of Chief Secretary and the Director of Urban Development Department for necessary further action as deemed fit under CCS conduct rules.

3. The full details of the case are mentioned in the main order dated 28/06/2019. However, the facts are reiterated in brief in order to appreciate the matter in its proper prospective.
4. A request was made by the appellant on 18/2/2019 to the Respondent No.1 for inspection of entire file records of processing application for installation of "Giant Wheel amusement Park" received from various person from the year 2017 to 2019 during Dev Bodgehwar Jatra at Mapusa and the NOCs, permission issued for the same for the above years by the Mapusa Municipality. As no information was given nor any reply was sent to appellant within a statutory period of 30 day hence the first appeal was filed by the appellant on 22/3/2019 and the FAA failed to issue any notice nor heard the first appeal nor passed any order within a stipulated time as contemplated u/s 19(6) of RTI Act, 2005. The appellant made the grievance stating that the respondent PIO did not provide him the information and the Respondent no.2 first appellate authority also did not disposed his first appeal with malafide intention and therefore filed the second appeal with this Commission in terms of section 19(3) of RTI Act, 2005. Both the Respondents opted to remain absent despite of due service of notice and did not bother to file their respective says in the appeal proceedings despite of giving them ample opportunities as such after hearing appellant, the

Commission vide order dated 28/6/2019 while disposing the Appeal No.141/2019 came to the prima-facie finding that there was contravention of provision of section 7(1) of RTI Act, there was delay in furnishing information and that the respondent PIO did not act diligently while disposing off the request for information under the RTI Act and hence directed to issue show cause notice to the respondent No. 1 PIO and also to Respondent No.2 First Appellate authority for violation of provision of RTI Act, 2005 by him and for non compliance of instructions issued to him by Director of Urban Development.

5. In view of said order passed by this Commission on 28/6/2019, the proceedings should converted into penalty proceedings.
6. Accordingly show cause notice were issued to both the above named Respondents on 09/07/2019. In pursuant to the show cause notice Shri Deniz C.T. De Melo appeared and submitted his Affidavit with the registry of this commission on 22/07/2019 which was inwards vide entry No. 1180.
7. Application on behalf on respondent No. 2 FAA to decide the matter by the full bench was placed on records by Advocate Metlock D'Souza. This commission referred the said application alongwith the records and proceedings of the appeal and penalty proceedings before the Chief Information Commissioner for further appropriate orders .
8. The records and the proceedings of the present case alongwith the order dated 4/12/2019 passed by the Chief Information Commissioner in Miscellaneous Application No. 8/2019 in penalty No. 31/2019 were returned back to this commission for further hearings and vide said order the parties were directed

to appear before the undersigned commissioner on 23/12/2019 for further hearings .

9. Ample opportunities were granted to respondent No.2 Shri Clen Madeira (FAA) to file his reply to Show cause notice despite of same no any reply came to be placed on record, as such I presume and hold that the Respondent no. 2 First Appellate Authority has no say to be offered .
10. Since both the respondents thereafter opted to remain absent, this commission had no any other option then to decide the matter based on the records available in the file.
11. Vide Affidavit Respondent No.1 PIO admitted of having received the application of the appellant Shri J.T.Shetye dated 18/2/2019 seeking information u/s 2(j)of the RTI Act, 2005 pertaining to processing application for installation of giant wheel at Amusement park received from various person for Bodgeshwar Jatra, Mapusa during the year 2017,2018 and 2019.
12. It was further contended that as per the records of dealing hand Mr. Shivaji Kamble L.D.C., the file for the current year was available and pertaining to year 2017 and 2018 was not available and in support of this contention he relied upon the note of Shri Shivaji Kamble submitted to him informing the above facts .
13. It was further contended that memorandum dated 27/6/2019 was also issued by Asst. Public Information Officer to the said Shri Shivaji Kamble to trace out all the records and in support of this contention he relied upon the memorandum dated 27/6/2019.
14. It was further contended that concerned dealing hand had searched the files in order to locate the relevant documents/

files and they were unable to locate the file of Giant wheel Amusement park for Bodgeshwar Jatra, pertaining to year 2017-18.

15. It was further contended that they can allow the appellant to inspect the file for the year 2019.
16. It was further contended that the difficulty to furnish the information in time were genuine and not to cause any hardship and inconvenience to the appellant and on that ground he prayed for leniency.
17. I have scrutinized the records available in file and also considered the reply /Affidavit dated 22/07/2019 filed by the PIO in the present penalty proceedings.
18. At the outset it is hereby observed that the order was passed by this commission on 28/6/2019 directing him to provide the information within 20 days from the receipt of the order. The Affidavit dated 19/07/2019 to the show cause has been filed by the Respondent no. 1 PIO on 22/7/2019. Though the PIO vide his affidavit dated 19/7/2019 at para 8 had given undertaking to abide by the orders passed by this commission under provision of RTI Act, however he is silent on the compliance of the order of this commission. On the contrary if one peruses the said affidavit, at para 5 the Respondent PIO is now offering the inspection of the files pertaining to year 2019.
19. Till date the Respondent no.1 PIO not placed on records any documentary evidence of having complied the order of this commission or having taken steps toward this directions. As such I hold that the order of this commission apparently have not been complied .

20. This commission has also observed in her order dated 28/6/2019 passed in appeal no. 141/2019 that PIO did not place on records any correspondence of having responded to the application of the appellant in terms of section 7(1) of RTI Act. Though the PIO has now relied upon the note dated 8/3/2019 submitted to him by Shri Shivaji Kamble furnishing the available information, hence it was expected from PIO to intimate the said fact to the appellant at the initial stage itself. No any correspondence made to the appellant by the PIO intimating said fact and having responded within 30 days time as required u/s 7(1) has been placed on record by the Respondent PIO.
21. The RTI Act came into existence to provide fast relief and as such the time limit is fixed under the said Act u/s 6(1) of RTI Act, 2005 within 30 days and to dispose first appeal maximum within 45 days.
22. On perusal of the application it is seen that the appellant has sought only for inspection of records. The said application was filed on 18/2/2019 and we are in February 2020, still it appears that the inspection of the available records have not been furnished to the appellant.
23. The Hon'ble High Court of Judicature of Madras W.P. No. 3776 and 3778 of 2013 P. Jayasankar V/s Chief Secretary as held;

“ It is only in cases, where the authorities have disobeyed the order of this commission or there is specific findings of obligation of the public authority was not performed in terms of section 6 and 7 the question of penalty or direction to take disciplinary action will arise”.

24. Hence in view of the ratio laid down by the above Hon'ble court the penalty also can be imposed for the non compliance of the commissions order and for non compliance of section 7 of RTI Act.
25. It also needs to mention that this Commission in appeal No. 183/2019 vide order dated 26/8/2019, in appeal No. 159/2019 vide order dated 26/8/2019, in appeal No. 161/2019 vide order dated 28/8/2019, in appeal No.160 vide order dated 28/8/2019, in appeal no. 182/2019 vide order dated 28/6/2019, in appeal No. 180/2017 vide order dated 17/1/2018 and in many other matters had admonished both the respondents for the contravention of the provisions and for delaying in furnishing information and had directed both the Respondents to be vigilant while dealing with the RTI matters and to strictly comply with the provisions of the Act. A recommendation u/s 25(5) was also issued to Director of Municipal Administration to issue instructions to both the Respondents to deal with the RTI matters appropriately in accordance with provisions of RTI Act.
26. The memorandum dated 8/2/2019 was issued by the Director of Urban Development to both the Respondents in pursuant to order of this Commission in appeal No. 98/2019 wherein both the respondents were instructed to handle RTI matters in a time bound manner as per the provisions of RTI Act in force and also held that any lapses on their part would be considered as dereliction of duties and action deemed fit under the rules would be initiated.
27. In the present case the applications was filed on 18/2/2019 apparently after the said memorandum dated 8/2/2019 was issued by the Director of Urban Development to both the Respondents. Despite of same both the Respondents has continued their irresponsible behaviors which amounts to

dereliction of duties and off unbecoming of Government servants. Needless to say that such an conduct on the part of both the Respondents are not in conformity with the provisions and the spirit of RTI Act.

28. No reasonable cause has been shown by respondent no. 2 FAA and was not able to demonstrate the reasons for not disposing first appeal filed interms of section 19(1) of RTI Act within stipulated time as contemplate under the RTI Act.
29. 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 harassmt & Detriment caused to appellant could have been avoided.
30. The Hon'ble High Court of Punjab and Haryana in Civil Writ Petition No.14161 of 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".

31. 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.**”

32. Hence according to the ratios laid down in the above judgment the PIO has to provide correct information in a time bound manner as contemplated under the RTI Act. The PIO herein has failed to justify the reasons by way of cogent and convincing evidence the factors attributing for delay in furnishing information. On the contrary the note submitted by Shri Shivaji Kamble and the memorandum dated 26/7/2019 issued to Shri Shivaji Kamble relied by the Respondent PIO does not come to his rescue as it is seen that though the said information was submitted by dealing hand promptly to PIO on 8/3/2019, the PIO failed to respond to the application of the appellant within 30 days. Secondly it is seen that the memorandum issued to the appellant on 27/6/2019 is only after the first hearing taken place before this Commission. Such a conduct and attitude of Respondent PIO in the present matter appears to be suspicious vis-à-vis the intend of the RTI Act and is not in conformity with the provisions of the RTI Act.
33. Needless to say that, the past records shows that the Respondent no. 2 FAA have acted in similar manner and fashion and showing scan respect to the provision of RTI Act

and also to the commission . Despite of recommendation u/s 25(5) of RTI Act 2005 were issued by the Director of Municipal Administration on 8/2/2019 the respondent FAA has continued his irresponsible behavior thereby also showing disrespect to his superior officers. Hence it is the need of the hour that such attitude and conduct of Respondent No.2 First Appellate Authority cannot be taken lightly as it obstruct the very intents of the RTI Act.

34. In view of above discussion, considering the cumulative facts and circumstances of the 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 and for recommendation and reporting the conduct of Respondent No. 2 First Appellate Authority to his higher ups for further necessary action as deemed fit . Hence the following order:-

**ORDER**

- i) The Respondent Public Information Officer, Shri Deniz C.T. De Melo is hereby directed to pay a sum of Rs. 3,000/- (Three Thousand only) as penalty for a contravention of sub-section (1) of section 7 of RTI Act, 2005, for delay in furnishing the information and for not complying the order dated 28/6/2019 of this commission passed in appeal No. 141/2019. The penalty amount shall be credited to the Government Treasury.
- ii) In excise of my powers conferred u/s 25(5) of RTI Act 2005 this Commission recommends that the Chief Secretary, for the State of Goa, Secretariat-Porvorim, shall issue instruction to the Respondents to deal with the RTI matters appropriately in accordance with the provisions of the RTI Act and any lapses on the part of respondents be considered as dereliction of his duties.

iii) The copy of the order may be sent to the (i) Chief Secretary for the State of Goa, Secretariat, Porvorim-Goa(ii) to the Secretary, Personnel Department, Secretariat, Porvorim-Goa (iii)to the Director of Urban Development, Panajim-Goa and (iv)to the Director of Accounts, North-Goa at Panajim for information and for necessary action.

With the above directions the above penalty proceedings stands closed.

Pronounced in the open court. 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