

**GOA STATE INFORMATION COMMISSION**

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

Tel No. 0832-2437908/2437208 email: [spio-gsic.goa@nic.in](mailto:spio-gsic.goa@nic.in) website:www.gsic.goa.gov.in

---

**Appeal No. 205/2021/SCIC**

Shri. Pedrito Misquitta alias  
Shri. John Peter Misquitta,  
Souza Vaddo, Candolim,  
Bardez-Goa. 403515.

.....Appellant

V/S

1. The State Public Information Officer,  
Directorate of Panchayats,  
Panaji-Goa. 403001.

2. The Dy. Director (Administration) &  
First Appellate Authority,  
Directorate of Panchayats,  
Panaji-Goa. 403001.

.....Respondents

**Shri. Vishwas R. Satarkar**

State Chief Information Commissioner

**Filed on: 23/08/2021**

**Decided on: 05/01/2022**

**FACTS IN BRIEF**

1. The Appellant, Mr. Pedrito Misquitta @ John Peter Misquitta, r/o Souza Vaddo, Candolim, Bardez-Goa, by his application dated 04/08/2020 filed under sec 6(1) of Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought information from the Public Information Officer (PIO), Directorate of Panchayats, Panaji Goa.
2. Since the said application was not responded by the PIO within stipulated time, he filed first appeal before the Deputy Director of Panchayat, North at Panaji Goa being the First Appellate Authority (FAA).
3. The FAA by its order dated 22/04/2021 allowed the said appeal and directed the PIO to furnish information free of cost to the Appellant within 08 days from the date of receipt of the order.

4. Aggrieved with the order of FAA, the Appellant preferred this second appeal before the Commission under sec 19(3) of the Act, with the prayer to impose penalty upon the PIO under sec 20 of the Act.
5. Parties were notified, pursuant to which the PIO, Ms. Neha H. Bandekar appeared and filed her reply. FAA duly served opted not to appear and file his reply.
6. According to Appellant, he received the order of FAA on 24/04/2021, however due to Pandemic, curfew and lockdown declared by State Government and also he had to undergo covid test, there is delay in filing the second appeal and prayed for condonation of delay. The said pleading was not objected by the Respondents, and hence the delay was condoned.
7. On going through the proceeding, it reveals that Appellant has received all the information, however his main grievance as prayed in appeal memo is to invoke section 20 and for other penal provisions against PIO for intentionally delay in furnishing the information. He also alleged that PIO has acted in excess of her power and inconvenience with the third party has denied the information, thus causing grave inconvenience to him, and since PIO failed to furnish the information within 30 days as stipulated under the Act, he emphasised to impose penalty against PIO for violating the provision of the Act.
8. On the other hand, PIO contended that the RTI application dated 04/08/2020 inwards in the office of PIO on 11/08/2020. Noticing that the Appellant is not the party in the litigation bearing No. DDPN/CAL/BAR/172/2018, considered the Appellant as third party, and issued notice under sec 11 of the Act to concerned parties to obtain their say.

Further according to PIO, after obtaining say from the concerned parties, she could not furnish the information in time bound manner as PIO was tested Covid Positive and also the dealing hand was tested Covid positive. In the meantime, the Appellant filed first appeal before FAA.

9. The FAA by its order dated 22/04/2021, directed the PIO to furnish the information and she complied the order of FAA promptly and furnished all the information to the Appellant by letter No. 26/87/DP/RIA/2021/3161 dated 29/04/2021.
10. Perused the pleadings, reply of the PIO and scrutinised the documents on record.
11. On perusal of RTI application dated 04/08/2020, it is noticed that the Appellant sought the information related to one case bearing No. DDPN/CAL/BAR/172/2018 which was finally decided and disposed off by the public authority on 12/12/2019. By his application, the Appellant sought the copy of judgement/order, copy of notice issued by the court, reply filed by the Respondent etc. This information is held by the public authority in the course of its functions in its official capacity, which information cannot be treated as confidential information and once the public authority reached to the conclusion and decided the matter, it is in public domain and certainly this information is not exempted from disclosure under sec 8 and/or sec 9 of the Act.
12. Records of the proceeding shows that until the order of FAA, the PIO did not reply to the RTI application of the applicant. Sub-section 1 of Section 7 of the Act, requires PIO to dispose the request of the seeker within 30 days. Disposal of the request may result in furnishing of information on payment of fees or rejection of request on the ground mentioned in sec 8 and 9 of the Act. In case PIO finds that the information can be furnished, she has to

furnish within said time or refuse it also within said time, thus any of such exercise has to be completed within 30 days.

13. As claimed by the Respondent, sec 11 of the Act is not applicable in the case in hand. Section 11 of the Act reads as under:-

*"11. **Third party information.**\_\_\_\_ (1) Where a Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

*Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party."*

As can be seen from the above provision, the information which relates to a third party and prima facie can be termed

as confidential, such information can be termed as third party information and denied to the information seeker. The said proviso has to be read with exemption clause provided under sec 8. The PIO unnecessarily stretched the provision of sec 11 of the Act and issued notice to the third party which was unwarranted, therefore caused delay in furnishing the information which resulted in to filing of first appeal by the Appellant.

Section 11 does not give third party an unrestricted veto to refuse disclosing information. It only gives the third party an opportunity to voice its objection to disclose information. In fact, section 11 is a procedural section and not an exemption section.

14. Even assuming that PIO is satisfied that notice is required under sec 11 of the Act, she did not act deligently as the record shows that submission of the third party received by the office of PIO is on 31/08/2020. Apart from that, third party did not claim that information sought is confidential information. Besides that, the PIO also failed to reply within 40 days from the date of receipt of the application. I find that PIO has failed to perform her obligation under the Act.

15. However in the present case, PIO contended that she could not furnish the information to Appellant within stipulated time as she and the dealing hand was tested positive at the relevant time.

Hon'ble Supreme Court in **Manohar M. Anchule v/s State of Maharashtra & Anrs (2013 (1) ALL MR 420 (SC))** has held that:-

*"..... It is not the legislative mandate that irrespective of the facts and circumstances of the given case, whether reasonable cause is shown or not, the Commission must recommend disciplinary action merely*

*because the application was not responded to within 30 days. Every case has to be examined on its own facts."*

In the present case, the PIO complied with the order of FAA promptly and furnished the information within a week. The default of PIO is not mala fide and intentional but for a reasonable cause.

16. Be that as it may, as a matter of fact, the entire proceeding was affected by the Covid Pandemic crises. PIO has submitted that there is delay in furnishing information within stipulated time as the PIO and also the dealing hand was tested Covid positive.

On the other hand, the Appellant also in his appeal memo admitted that in view of Covid Pandemic and lockdown he had to undergo COVID test and could not file the appeal within prescribed time. Anticipating this type of situation the **Hon'ble Supreme Court in Misc. Appln. No. 665/2021 in SMW(C) 3 of 2020** has laid down the precedent as under:-

*"1. Due to the outbreak of COVID-19 pandemic in March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/applications/suits/appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and /or State). On 23/03/2020, this Court directed extension of the period of limitation in all proceedings before the Court / Tribunals including this Court w.e.f 15/03/2020 till further orders.*

*3. Thereafter, there was a second surge in COVID-19 cases which had a devastating and debilitating effect.*

*The Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No.665 of 2021 seeking restoration of the order dated 23.03.2020. Acceding to the request made by SCAORA, this Court passed the following order on 27.04.2021:*

*"We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall*

*be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.”*

17. The main grievance / prayer of the Appellant is that there is a intentional delay in furnishing information and being so he prayed for imposition of penalty on PIO under sec 20 of the Act. However considering the Pandemic situation and precedent laid down by Hon'ble Supreme Court, I am unable to impose penalty in this proceeding.
18. Considering the above facts and circumstances as the information sought was furnished free of cost to the Appellant, the appeal stand disposed with following:-

## **ORDER**

- The appeal is dismissed.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-

**(Vishwas R. Satarkar)**

State Chief Information Commissioner