

**GOA STATE INFORMATION COMMISSION**

“Kamat Towers” 7<sup>th</sup> Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: [spio-gsic.goa@nic.in](mailto:spio-gsic.goa@nic.in) Website: [www.scic.goa.gov.in](http://www.scic.goa.gov.in)

---

**Shri. Sanjay N. Dhavalikar**, State Information Commissioner

**Penalty No. 49/2022**

**In**

**Appeal No. 12/2022/SIC**

Shri. Nilesh Raghuvir Dabholkar,  
R/o H.No. 275/2 (New) Dabholwada,  
Chapora, Anjuna,  
Bardez-Goa 403507.

-----Appellant

**v/s**

1.The Public Information Officer,  
Awal Karkun,  
Office of the Mamlatdar of Bardez Taluka,  
Mapusa, Bardez-Goa.

2. The Mamlatdar of Bardez Taluka,  
First Appellate Authority,  
Mapusa, Bardez-Goa.

----Respondents

**Relevant dates emerging from penalty proceeding:**

Order passed in Appeal No. 12/2022/SIC	: 15/12/2022
Show cause notice issued to PIO	: 23/12/2022
Beginning of penalty proceeding	: 30/01/2023
Decided on	: 26/06/2023

**ORDER**

1. The penalty proceeding has been initiated against Respondent Smt. Yogita Velip, the then Public Information Officer (PIO) and Respondent Shri. Rupesh Kerkar, Public Information Officer (PIO) under Sub- Section (1) and (2) of Section 20 of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') for contravention of the provisions of the Act and non compliance of the direction of the Commission by not furnishing the information to the appellant.
2. The complete details of this case are discussed in the order dated 15/12/2022 of the Commission. However, the facts are reiterated in brief in order to steer through in its proper perspective.
3. The appellant had sought information on three points and it is the contention of the appellant that he was furnished incomplete information. Being aggrieved, he filed first appeal which was not

heard by the First Appellate Authority (FAA) within the mandatory period, hence, appellant preferred second appeal.

4. The Commission after due proceeding disposed the appeal vide order dated 15/12/2022. It was concluded that the then PIO had failed to furnish complete information to the appellant within the stipulated period and the said failure makes the then PIO liable for penal action, since her action was in contravention of Section 7(1) of the Act. Similarly, it was held that, it was the responsibility of the PIO - the then PIO as well as the present PIO, to maintain and preserve the information since the same is in public domain, and furnish the same to the applicant. The Commission concluded that Shri. Rupesh Kerkar, the present PIO who took over from Smt. Yogita Velip upon her transfer, is also liable for penal action since he failed to comply with the direction of the Commission. Smt. Yogita Velip, the then PIO and Shri. Rupesh Kerkar, present PIO were issued showcause notice seeking their reply as to why penalty as provided under Section 20(1) and /or 20 (2) of the Act should not be imposed against them.
5. Penalty proceeding was initiated vide showcause notice dated 23/12/2022 against Smt. Yogita Velip, the then PIO and Shri. Rupesh Kerkar, present PIO. Shri. Rupesh Kerkar appeared and filed reply dated 30/01/2023, 20/02/2023, 25/04/2023 and submission on 25/05/2023. Appellant appeared in person, filed rejoinder dated 13/03/2023.
6. PIO stated that, the available information was furnished to the appellant and the remaining information is not available in the records of the PIO. PIO further stated that, memorandum was sent to the President of Siddeshwar Devasthan, directing him to furnish the required information since the requested information pertains to the said Devasthan. However, the President of Siddeshwar Devasthan has maintained that they are not public authority as defined under Section 2 (h) of the Act and not liable to give any information under the Act. PIO further contended that, the remaining information cannot be furnished since the Siddeshwar Devasthan has refused to part with the information .
7. Appellant submitted that, though the information pertains to Siddeshwar Devasthan, he has sought the same from the office of the Administrator of Devalayas, who is the Mamlatdar of Bardez Taluka. The office of the Administrator of Devalayas being a public authority, the said information has to be in the possession of the Administrator and Administrator / Mamlatdar being Custodian of

Devalayas and is dutybound to maintain records of Devasthan under his jurisdiction and furnish the same to the appellant. Appellant further submitted that, the then PIO and the present PIO from the day one are trying to mislead the authority by citing the reply of the President of Siddeshwar Devasthan that the Devasthan is not a public authority.

8. Upon perusal it is seen that, the appellant had requested for information on three points and the requested information pertains to names of various committee members of Siddeshwar Devasthan. Appellant is aggrieved because he did not get the said information from the then PIO as well the present PIO.
9. It is seen that during the appeal proceeding as well as present penalty proceeding, PIO and Administrator / Mamlatdar (FAA in the present case) have repeatedly sent memorandums and notice to the President of Siddeshwar Devasthan requesting him to furnish the information and the President of Devasthan has unfailingly claimed that they are not public authority as defined under Section 2 (h) of the Act.
10. The Commission notes that the appellant has sought the information from the office of the Administrator of Devalayas and not from Siddeshwar Devasthan. Hence, the President of Siddeshwar Devasthan, who is not a party in the present matter, is not required to furnish the information to the appellant. On the contrary, it is the office of the Administrator of Devalayas and the PIO in the present matter, who is the public authority and custodian of Devalayas, should be in possession of the information pertaining to Siddeshwar Devasthan and is required to furnish the information.
11. It is pertinent to note Section 2 (f) which defines the term information as under:-
  2. (f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."
12. On the background of the definition of 'information' let us have a look at Article 70 of Devasthan Regulation. As per Article 70 of Devasthan Regulation, the Mamlatdar, being the Administrator of Talukas (Concelho) is designated as Administrator of the bodies of

members (mazanias), i.e. Managing Committee. The Mamlatdar is bestowed upon functions such as to watch over the execution of regulations and bye-laws, to maintain the order of regularity of the bodies (mazanias), to audit the accounts of bodies, to examine the documents and book-keeping, to transit Government decisions to the Committee etc. Meaning, Article 70 of Devasthan Regulation gives supervisory powers to the Administrator / Mamlatdar of Devasthan.

To be even more specific, Article 70 (16) states as under:-

*Art.70- It shall be incumbent on the Administrator of Talukas (concelho) as Administrator of the bodies of members (mazanias):*

*16) To examine the documents and book-keeping, to inspect the records, services and works, to initial the books of the bodies of members (mazanias) it being allowed to empower any employee of their confidence to perform this act.*

13. From the above provisions it is clear that the Administrator / Mamlatdar acts as a supervisory head of Devasthans in his Taluka. Therefore, he should be in possession of records of Devasthans pertaining to budget, audits, deposits in the form of cash and other valuables, minutes of the meetings of the Managing Committee of Devasthan (mazanias), etc. With this, the Commission finds that all the information pertaining to Devasthans is presumed to be in the custody of the Administrator and whatever information / details not provided by the Devasthan, Administrator/ Mamlatdar is authorized under Article 70 of Devasthan Regulation to take custody of the same. Also, as per the definition of 'information' as mentioned in Para 11, information relating to any private body which can be accessed by a public authority under any other law for the time being in force, is termed as information under the Act.
14. Thus, the Commission holds that the information sought by the appellant though belonged to a private body, i.e. Siddeshwar Devasthan, however, Administrator/ Mamlatdar has access to all such information of the said Devasthan and as such the PIO of the Office of Mamlatdar of Bardez in the present matter was required to furnish the information to the appellant.
15. In a similar matter, Hon'ble High Court of Delhi in Poorna Prajna Public School v/s Central Information Commission & Ors. (W.R. No. 7265/2007) has held in Para 8:-

*"8.... Information as defined in Section 2(f) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law*

*for the time being in force. Therefore, if a public authority has a right and is entitled to access information from a private body, under any other law, it is "information" as defined in Section 2(f) of the RTI Act. The term "held by the or under the control of the public authority" used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body. A private body need not be a public authority and the said term "private body" has been used to distinguish and in contradistinction to the term "public authority" as defined in Section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access, under any law, from private body, is information as defined under Section 2(f) of the RTI Act and has to be furnished."*

16. The High Court of Jammu and Kashmir and Ladakh in a recent judgment in the case Tyndale Biscoe School & Ors. v/s Union Territory of J & K & ors. (AIR 2022 J&K 112) has observed as under:-

*"14. Definition of two expression i.e. "information" and "right to information" given in Section 2(h) and 2(j) of the Act of 2005 when considered in juxtaposition and interpreted in harmony with each other would unequivocally and clearly manifest that not only the information which is held by the public authority can be accessed under the Act of 2005 but such information as is under the control of such authority, too, can be accessed. Information relating to any private body which can be accessed by a public authority under any other law for the time being in force can also be accessed by the information seeker under the Act of 2005. There is no doubt that in terms of Section 22, Act of 2005 has been given overriding effect over any other law for the time being in force or instrument having effect by virtue of any law other than the Act of 2005. It is, thus, axiomatic that if a public authority has a right and is entitled to access information from a private body under any other law, it is information as defined in Section 2(f) of the Act of 2005. The term "held by or under the control of any public authority" used in Section 2(j) of the Act of 2005 will include information to which a public authority has right to access from a private body under any other law."*

17. It is clear from the ratio laid down in above judgment that the PIO, office of the Administrator of Devalayas should be in possession of the information pertaining to Devasthans in his jurisdiction and has access to any such information of Devasthans in his jurisdiction.

Shri Siddeshwar Devasthan might have taken a stand that they are not public authority under the Act. Nevertheless, the Commission holds that the Administrator/ Mamlatdar of Bardez has access to all the information pertaining to the said Devasthan and the PIO of the office of Administrator/ Mamlatdar was required to furnish the same. The Commission, during the appeal proceeding as well as penalty proceeding had given sufficient opportunity to the then PIO and present PIO to furnish the information, however they preferred to file stereotyped replies and evaded disclosure of the information.

18. The Honourable 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."*

19. The Honourable High Court of Delhi in Writ Petition (c) 3845/2007; Mujibur Rehman V/s Central Information Commission, while mentioning 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."*

20. In the background of the findings as mentioned above and subscribing to the ratios laid down by the Hon'ble High Court in the above mentioned judgments, PIOs in the present matter are held guilty for not complying with the provisions of the Act and direction of this Commission. The then PIO is held guilty of contravention of Section 7 (1) of the Act and the present PIO is held guilty of not adhering to the direction of the Commission and indulging in filibustering tactics which is not in tune with the objectives and spirit of the Act.

21. Thus, the Commission is completely convinced and is of the firm opinion that this is a fit case for imposing penalty under Section 20 (1) of the Act against the then PIO and the present PIO. Hence, the Commission passes the following order:-

a) Smt. Yogita Velip, the then PIO, Office of the Mamlatdar of Bardez, Mapusa-Goa shall pay Rs. 5,000/- (Rs. Five Thousand only) as penalty for contravention of Section 7 (1) of the Act.

b) Shri. Rupesh Kerkar, the present PIO, office of the Mamlatdar of Bardez, Mapusa –Goa shall pay Rs. 5,000/- (Rs. Five Thousand only) as penalty for not complying with the direction of the Commission to furnish the information to the appellant.

c) Aforesaid amount of penalty shall be deducted from the salary of PIOs and the amount be credited to the Government treasury.

22. With the above directions, the present penalty proceeding 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/-

**Sanjay N. Dhavalikar**

State Information Commissioner  
Goa State Information Commission  
Panaji - Goa