GOA STATE INFORMATION COMMISSION
AT PANAJI

CORAM: Shri Motilal S. Keny State Chief Information Commissioner

Penalty Case No.39/2010
In
Appeal No. 119/2009

Shri Umesh V. Kurdikar,
H. No. 773/13, Socorro,
Alto Porvorim … Appellant/Complainant.

V/s.

Public Information Officer,
Subhash Nilekani, Landscape Architect,
Town & Country Planning Department,
Panaji – Goa

Shri K. Halarnker (Office Supdt.),
Deemed Public Information Officer,
Town & Country Planning Department,
Panaji – Goa

Smt. Eviana C. Estibeiro e Gonsalves (Head Clerk),
Deemed Public Information Officer,
Town & Country Planning Department,
Panaji – Goa

Shri. Sandesh Naik (UDC),
Deemed Public Information Officer,
Town & Country Planning Department,
Panaji – Goa … Respondent/Opponent.

Adv. A. Mandrekar for Appellant/Complainant.
Respondent/Opponent in person.

O R D E R

(27.04.2011)

1. By Order dated 10.11.2010 this Commission issued notice to Respondent/P.I.O. Subhash Nilekani, Shri K. Halarnkar, Smt. Gonsalves and Shri Sandesh Naik to show cause why penalty action should not be taken against them for causing delay in furnishing information.

2. In pursuance of the said notice they have filed the reply which is on record.

It is the case of Respondent/PIO that whatever information was made available and was put on record was made available to the applicant within 30 days of receipt of the application, during

the First Appeal hearing, Second Appeal reply stage and even information was extracted and culled from service records to give the information sought when directed by the Commission except one item which is non-est as on date in department records. It is the case of the Respondent/PIO that at no stage was the information delayed by the PIO., at every stage whether at 6(1) stage or 19(1) stage or 19(3) stage of the implementation of the Act, what was put on record was made available at the earliest and can be checked from the certification on each of the document issued to the applicants or their Advocate under the provisions of R.T.I. Act, 2005 which has a date alongwith certification.

3. It is the case of Shri K. D. Halarnkar that he was transferred and relieved on 08.09.2009 with instruction to join as Chief Officer at Pernem Municipal Council and that he was not in Town & Country Planning Department as on 06.10.2009. That he was not appointed as A.P.I.O. and there is no such standing order issued to him by the competent authority during his tenure in Town & Country Planning Department under relevant section of R.T.I. Act. That since the post of Office Superintendent is transferable files/records are being kept in the custody of the Head Clerk and U.D.C. concerned being the Departmental employees and therefore the Superintendent is not having any direct/indirect access of the files/records. That most of the R.T.I. applicants received under R.T.I. were never routed through him and as such it is not correct to suggest that the information called for was delayed by him as alleged. That whenever information was sought through P.I.O., he tried his best to furnish the information to the P.I.O. on top priority. That it is not known whether there was any delay by Head Clerk or U.D.C. concerned for which the information was sought for and was not routed through him. It is his case that he does not have any access of the files/records as Office Superintendent. That from 08.09.2009 he is not in the department and that he may be dropped as party.

4. It is the case of Smt. Eviana C. Estibeiro e Gonsalves that she retired on superannuation as a Head Clerk in the Town and Country Planning Department with effect from 31.01.2010 afternoon. That during her tenure as Head Clerk in the Town and Country Planning Department, then Public Information Officer, called upon her to furnish only certain (part) information sought upon an application made by the Appellant above named and that she promptly forwarded/furnished the same to the concerned P.I.O. and that there was no delay on his part in any manner whatsoever. In short it is her case that she is not at all responsible for any alleged delay in furnishing the information to the Appellants and therefore not liable for any penalty/punitive action.

It is also her case that her second son Shri Freddy A. Gonsalves expired at the age of 33 years on 09.03.2010 and on his sudden demise she is totally disturbed/depressed health-wise and not in a position to move out of the house.

5. It is the case of Shri Sandesh V. Naik that he had received the applications under R.T.I. from his Superintendent/Head clerk to provide the information for onward submission to the P.I.O. of the Headquarters, Town & Country Planning Department, Panaji. That the relevant information which was available in the office record had been provided in the file and forwarded to the Head clerk/Superintendent within the time limit given by the P.I.O., Head Quarters except the copy of the minutes of D.S.C. and not D.P.C. constituted for grant of A.C.P. benefits in the year 2003. That the reason behind this is that the concerned file was not traceable in the office record as well as in the cupboard of the Office Superintendent wherein the important administrative files are kept. That whatever assistance sought by the P.I.Os, Town & Country Planning Department, Headquarters from the undersigned to provide the information to the above referred Appellants has been given within time/without further delay as the matter is time bound/most urgent. It is further his case that his role as an U.D.C. in the Department is limited, as above him

there is Head Clerk/Superintendent, etc., who deals with important administrative matters and that he may not be held responsible for delay in providing information under R.T.I. to all the above referred Appellants whose information are in similar nature. According to him proceedings be dropped against him.

6. Heard the arguments. Adv. A. Mandrekar for Appellant referred to the facts of the case in detail. According to him no complete information is furnished. He also submitted that PIO has not complied with the Order of the F.A.A. He relied on two Judgments of this Commission. According to him penalty be imposed and compensation be granted.

Respondent Shri S. Nilekani referred to section 5(4) and 5(5). According to him everything was put on record and whatever information was available was furnished. He also submitted that he was not the custodian of information. According to him he is no longer PIO and he has retired. He next submitted that he is not at all responsible for delay and the information sought was basically administrative information.

Smt. Gonsalves submitted that she was asked to furnish information on certain points and she submitted the same well in time. According to her she is not at all liable for delay.

Shri Halarnkar and Shri Sandesh Naik referred to the replies. According to them they are not at all responsible for delay nor information was with them. Shri Halarnkar also submitted that he was transferred at the relevant time.

7. I have carefully gone through the records of the case. It is seen that the application is dated 30/06/2009. By reply dated 30/07/2009 some information was furnished. It was also mentioned that no information was made available by deemed P.I.O. and hence it is not available. Some information was furnished on 28-8-2009 and some after the order of First Appellant Authority. It is the case of the Respondent that application was processed and marked to deemed P.I.O. i.e office Superintendent Shri K. Halarnkar, Head Clerk Smt. Gonsalves and UDC Shri Sandesh Naik of course in their reply denied this. Smt. Gonsalves was since retired.

The First Appellate Authority has observed: "……I am of the considered opinion that the P.I.O. has tried his level best to give information as was put on record by deemed P.I.Os……". However complete information was not made available. That means the First Appellate Authority did not find fault with the P.I.O.

Admittedly, there is delay in furnishing the information and this delay is of about 28 to 30 days. Again there is no dispute on this aspect. The only bone of contention is that deemed P.I.Os Shri K. Halarnkar, Smt., Gonsalves and Shri Sandesh Naik, vehemently denied that may they are responsible for delay and this is reflected in their reply. P.I.O. right from beginning states that they did not furnish the information. First Appellate Authority also supports the P.I.O on this aspect. This is perhaps a unique case wherein such a situation has arisen.

Under section 5(4) of R. T.I. Act a P.I.O. can take assistance of any Officer and under section 5(5) a person whose assistance has been sought by P.I.O. in discharging his duty under R.T.I. Act shall be equally responsible. This section when read with section 20(1) empowers the Commission to impose penalty on equally capable Officers.

8. Now, I shall proceed to consider the question of imposition of penalty upon the Opponent P.I.O. under section 20 of the R.T.I. Act. Regarding P.I.O. I have observed above. The contention of Shri Halarnkar, Smt. Gonsalves and Shri Sandesh Naik are also mentioned above. It is to be noted that Smt. Gonsalves has since retired. Admittedly there is delay. Under R.T.I. Act delay is inexcusable. Public Authorities must introspect that non-furnishing of information lands a citizen before First Appellate Authority and also this Commission resulting into unnecessary harassment of a common man which is socially abhorring and legally impermissible. Sometimes injury to society is more grievous. Therefore, some sort of penalty helps in curing this social grief.

In the facts of this case I feel the imposition of a penalty of Rs. 5000/- (Rupees Five Thousand Only) would meet ends of justice.

This amount is to be paid by the office of the Chief Town Planner, Town and Country Planning Department, Panaji/Public Authority. This Commission permits Chief Town Planner or any other Senior Officers appointed by Chief Town Planner to conduct inquiry to fix the responsibility of delay amongst these above mentioned officers and accordingly apportion the said amount of Rs. 5000/- amongst them and recover the same from them if he so desires. It is also to be noted that Smt. Gonsalves has since retired. In any case inquiry fixing responsibility about delay is to be conducted.

9. In view of all the above I pass the following Order:-

O R D E R

A penalty of Rs.5000/- (Rupees five thousand only) is imposed to be paid by the Office of Chief Town Planner, Town and Country Planning Department, Panaji/Public Authority from the funds of Public Authority. It is open to the Chief Town Planner to conduct inquiry to fix the responsibility of delay amongst these officers and accordingly apportion the said amount of penalty amongst them as observed in para 8 above. The said amount be paid in the Government Treasury by July, 2011. The officer conducting inquiry to submit the compliance report as early as possible preferably within two months from the date of receipt of this Order.

A copy of the Order be sent to the Director of Accounts, Panaji, Goa for recovery of the penalty as mentioned herein above.

Penalty proceedings are accordingly disposed off.

Pronounced in the Commission on this 27th day of April, 2011.

Sd/-
(M. S. Keny)
State Chief Information Commissioner