

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Appeal No. 15/SCIC/2010

Mr. M.P. Singh, IFS (Retd.),
R/o. Prothrapur, P.O. Garacharama,
Port Blair,
Andaman &
Nicobar Islands – 744 105 ... Appellant

V/s.

Shri Debendra Dalai (IFS),
DCF(WL) & State Public Information Officer,
Department of Environment & Forests,
Government of Goa,
Junta House, IV Floor,
18th June Road, Panaji – Goa ... Respondent

Appellant in person.

Respondent in person.

ORDER
(10.11.2011)

1. By Judgment and Order dated 14.05.2010 this Commission issued notice under section 20(1) of the Right to Information Act, 2005 to the Respondent No. 1/Public Information Officer (P.I.O.) to show cause why penalty action should not be taken against him for causing delay in furnishing information.

2. In pursuance of the notice the Appellant has sent a reply dated 04.06.2010. According to him till 15.02.2010 no communication was received from Respondent No. 1 and hence question of receipt of letter dated 09.11.2009 and 6th/08.01.2009 (it should be 2010) does not arise. That the Respondent No. 1 and 2 woke up only after receipt of Appeal by the Commission and whatever documents have been placed before the Commission showing date of issue prior to 27/28 January by Respondent No. 1 and 2 are fabricated and manipulated documents to escape from penalty action under R.T.I. Act. That if judicious inspection of office records of Respondent No. 1 and 2 are verified the truth will come to light.

3. The Respondent No. 1 has filed the reply which is on record. It is the case of Respondent No. 1 that the communication by the Respondent dated 09.11.2009 and 6/08.01.2010 were dispatched by post Under Certificate of Posting. That the matter was heard before the First Appellate Authority during the hearing dated 04.02.2010 and ordered to provide the information sought by the appellant within 15 days of receipt of balance money from the Appellant. That no communication as on date has been received from the Appellant which clearly indicate the non-seriousness of the Appellant. That the information consisting of 447 pages has already been sent in pursuance of the order dated 14.05.2010 and the balance money has not yet been remitted by the Appellant till date. That the letters were dispatched under Certificate of Posting through the Department of Post. It is the case of the Respondent that the Respondent has sent the information by Post but the Appellant has not mentioned about the receipt of the same and falsely alleges manipulation and fabrication of documents.

4. Both the parties submitted written submissions, that is to say, the Appellant submitted the written submissions and the Respondent submitted the reply to the written submissions.

In short it is the case of the Appellant that letter dated 09.11.2009 and 6/08.01.2010 is manipulated documents. That if letter dated 09.11.2009 and 6/08.01.2010 said to have been sent to the Appellant by Respondent No. 1 are taken as genuine document then question arises as to how difference of Rs. 140/- mentioned in letter dated 6/08.01.2010 has now become difference of Rs.394/- being cost of information that too excluding documents related to Rs.45,00,000/-. According to the Appellant no communication was received prior to 04.02.2010 either from Respondent No. 1 or Respondent No. 2.

The Respondent No. 1 has filed the detail reply. In short it is the case of the Respondent that the estimated amount of difference in payment of cost of document was initially communicated to the Appellant and on supply of entire relevant document copies to the Appellant the actual difference in cost of copies of document came to Rs.394/- which has not been received from the Appellant. The

Respondent No. 1 denies the contents of the written submissions specifically in the reply.

5. Appellant has filed written arguments on 21.09.2010 which are on record. It is mentioned about dispatch register, etc. being called etc. I have carefully perused the said reply.

6. I have carefully gone through the records as well as the written submissions on record.

It is seen that the Appellant vide application dated 26.10.2009 sought certain information under R.T.I. Act. As per postal website the same was received by Shri Debendra Dalai on 03.11.2009. However according to Respondent No. 1 the same was received on 05.11.2009. By letter dated 09.11.2009 the Appellant was informed that the information sought being very voluminous and spread over a period of approximately 2 years, the same are being retrieved from the old records and closed files and the copy of the information sought will be submitted soon after relevant pages are photocopied. That by letter dated 6/08.01.2010 the Respondent No. 1/P.I.O. informed the Appellant that the copies of the desired information are ready. However the Appellant is requested to deposit an amount of Rs.140/- towards charges for supply of copies of information after adjusting an amount of Rs.500/- already deposited by him through demand draft.

Now if this letter is accepted then there is no delay as such. Section 7(3) lays down as under:-

“(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving—

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;”

It is to be noted here that since the information is to be paid for, the period intervening between the dispatch of information (indicating the further fee to be deposited) and payment of fee shall be excluded for the purpose of calculating the period of 30 days.

In the Judgment passed by this Commission on 14.05.2010 this Commission observed as under:-

“9. Now it is to be seen whether there is any delay. Apparently there appears to be some delay in furnishing information. However, P.I.O. should be given an opportunity to explain that the same was not intentional, malafide, etc. particularly in view of letter dated 06.11.2009, 08.01.2010 and Order of F.A.A. This is essential in the factual matrix of this case. Regarding payment to be made or not is to be decided while considering the aspect of delay.”

7. Before going to the said letters I shall refer to the Order of the F.A.A. There is mention of letter dated 09.11.2010 and 08.01.2010 in the said order and information was ordered to be provided on receipt of balance money of Rs.140/- from the Appellant. It appears that the Appellant did not pay the said amount. In the Second Appeal the Appellant has not challenged the said letters.

The Appellant in his written arguments states that Respondent No. 1 created those letters and placed on record for his defence after 19.01.2010, i.e. after receipt of Appeal dated 14.12.2009 by the Hon'ble Commission. The Appellant also suggested to check the records i.e. diary register, etc. as mentioned in para 3(a) of the reply/arguments. Accordingly the Respondent was directed to produce the register which he produced. I have gone through the said register. As per the same one letter is posted on 10.11.2009 and the other posted on 13.01.2010.

7. Under Section 20(1) of the R.T.I. Act, the Information Commission must satisfy itself that the C.P.I.O. has without reasonable cause not furnished information within the specified time frame. Delay caused without any 'reasonable cause' will attract penalty provisions.

I have perused some of the rulings of Central Information Commission on the point.

In a case (Ms. S. Lilawathi *v/s.* JIPMER, Pondicherry, Appeal No. 39/ICPB/2006 dated 29.06.2006) where documentary evidence for advertisements, question papers, selection, qualification of the yoga teachers, etc. sought, the Commission observed that the public authority is bound to furnish only the information as is available with it. Therefore, no merit is found in the Appeal. Even though there has been delay in furnishing the information, the Commission observed that CPIO had not deliberately delayed the same.

In Dr. A.S.D. Roy, Nagpur *v/s.* Indian Bureau of Mines, Nagpur (Appeal No. CIC/AT/A/2006/00066 dated 04.07.2006) the Commission observed that there is evidence of exercise of due diligence by all concerned to collect and supply the information. It may have been lot better if the C.P.I.O. had left the Complainant periodically informed about the stages of the processing of his case and the possibility of some delay. In overall consideration of all factors, the case against the Respondents for causing delay is dropped.

In (C.P.Singh *v/s.* Airport Authority of India Appeal No. CIC/OIC/A/2007/0064 dated 14.05.2007) voluminous information containing 158 pages of documents has been meticulously complied and there was a delay of 7 days. Since information was furnished free of cost, the request for information of penalty was not accepted by the Commission.

8. In the case before me according to P.I.O. letter under Certificate of Posting was sent. However, according to Appellant no such letter was sent. There is no reason to disbelieve the Appellant. So also records do show that letter was posted. Whatever may be the case benefit of doubt is to be given to the P.I.O. in the factual matrix of this case.

No doubt information was to be collected, compiled, etc. as stated by P.I.O. Under R.T.I. information as held by the Public Authority is to be provided. In any case in the process there is some delay. However the same cannot be considered as deliberate

or intentional. Besides, P.I.O. tried to inform the appellant by letter dated 09.11.2009. It is a different matter that letter did not reach. In any case delay, if any, is to be condoned.

Whether payment to be made or not was kept open while considering the aspect of delay. Considering the pros and cons of the matter the ends of justice would be met if information is provided free of cost as envisaged under R.T.I. Act.

9. This Commission had directed to furnish the information. In his reply also the Appellant has stated that he can pay the amount of Rs.140/- or Rs.394/- demanded by Respondent. But according to him whether the same is legally responsible. In the factual backdrop of this case it is not legally sustainable and the information provided is to be treated as free of cost.

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

ORDER

The information furnished is to be treated as free of cost under section 7(6). Show cause notice is discharged and penalty proceedings dropped.

The penalty proceedings are accordingly disposed off.

Pronounced in the Commission on this 10th day of November, 2011.

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

