

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Penalty No. 18/2010

In

Complaint No. 416/SCIC/2010

Mr. Domnic D'souza,
H. No. 315/4, Tropa Vaddo,
Sodiem,
Siolim – Goa

... Complainant.

V/s.

Public Information Officer,
Mamlatdar of Bardez,
Mapusa – Goa

... Opponent.

Ms. Joan Mascarenhas e D'Souza, representative of the
Complainant.
Opponent in person.

ORDER
(29.11.2011)

1. By Order dated 16.08.2010 this Commission issued notice under Section 20(1) of the Right to Information Act, 2005 to Opponent/Public Information Officer why penalty action should not be taken against him for causing delay in furnishing information.

2. In pursuance of the notice issued to the Respondent/Opponent has filed the reply which is on record. It is the case of the Opponent that the Complainant vide letter dated 06.01.2009 had sought information on the Complaint filed by him before Dy. Collector & S.D.M and referred to their office vide Memorandum dated 11.12.2009. That the Opponent vide Memorandum dated 12.01.2010 directed the Circle Inspector for issuing necessary information in the matter. That the office of Opponent vide Office Memorandum dated 22.02.2010 directed the Talathi of Siolim Sodiem Saza to conduct the inspection and submit the report. That the Talathi

inspected the site and submitted the report on 29.03.2010. That upon the inquiry with the Talathi of Sodiem Siolim Saza, it was revealed that the delay has been caused in the inspection of the structure, as the structure is located in the private property and that the owner of the structure was not available for inquiry and the inspection and as the presence of owner of the structure is very much necessary in case of inspection in private properties hence the inspection could be conducted only on 29.03.2010. That the same was forwarded to the dealing hand looking after R.T.I. subject and was issued to the Complainant on 12.04.2010. That the R.T.I. Act, 2005 envisages the issue of information which is held by the P.I.O. in his possession in any format and the information in the present case was not in the possession of the P.I.O. and the same itself has been created on 29.03.2010. That the Complainant himself has not mentioned the date of inspection on the application. That the Complainant has not shown any reason for filing the present penalty proceedings as no prejudice has been caused to him. It is further the case of the Opponent that information has not been denied to the party and that the party has not claimed that the information has been delayed by malicious intentions to cause deliberate loss to the party and that the party has accepted the information without any protest and that all these factors clearly state that the present proceedings are filed only with the sole intention to harass the P.I.O. According to the Opponent the penalty proceedings be dropped.

3. Heard Smt. Joan Mascarenhas e D'souza, representative of the Complainant and the Opponent. Both sides have filed written arguments which are on record.

According to the Complainant there is delay. The information was not furnished within 30 days. That Appeal was

filed on 26.02.2010. That the information was furnished on 12.04.2010.

During the course of his argument the Opponent submitted that R.T.I. Act envisages the issue of information which is held by the P.I.O. in his possession in any form. That the information in the present case was not in the possession of the P.I.O. and the same itself was created on 29.03.2010. That delay is not intentional. He also relied on the judgment in Writ Petition No. 205/2007 in A.A. Parulekar *v/s.* Goa State Information Commission & Anr.

Written arguments in reply to the arguments of the Opponent are on record.

4. I have carefully gone through the records of the case and also considered the arguments advanced by the parties.

It is seen that application seeking information is dated 06.01.2010. Of course there is a mistake in the year as it is mentioned 2009. It was received in the office on 06.01.2010. However, no reply was furnished. Being aggrieved the Complainant preferred the Appeal. It is seen from record that appeal was preferred on 26.02.2010. The Opponent filed the reply before First Appellate Authority/Dy. Collector & S.D.O. Mapusa dated 09.04.2010 that information sought by the Appellant has been kept ready and he may collect the same on any working day. The information is furnished by letter dated 12.04.2010. Admittedly, there is delay of about 60/65 days in furnishing the information.

According to the Opponent delay is not intentional as the information sought was not available with the Public Authority/P.I.O. Under R.T.I. since information sought was not there or was not available it did not qualify to be an information 'held' by the Public Authority and as such cannot be disclosed. R.T.I. Act can be invoked only for access to permissible information. Again under R.T.I., P.I.O. is not to create

information simply because an information seeker has asked for it. However, it is obligatory for the P.I.O. to inform the information seeker about the same within 30 days. Even when First Appeal is filed, it is seen from records there is no mention that information is not available. As per notice of First Appellate Authority, as seen from record, first appearance was on 17.03.2010. In any case P.I.O. ought to have informed within 30 days as required under the Act. Even if the information was being created the Applicant/Complainant should have been kept informed. Nothing of the sort has been done. No doubt the information is furnished but late. Consequently, there is delay.

5. Now it is to be seen about imposition of penalty upon the Opponent under Section 20 of the R.T.I. Act. Even though the Opponent has given explanation the fact remains that there was delay in furnishing information/reply. Under R.T.I. delay is inexcusable. Public Authorities must introspect that non-furnishing of information lands a citizen before First Appellate authority and also before this Commission resulting into unnecessary harassment of a common man which is legally impermissible.

Under R.T.I. penalty is Rs.250/- per day. However in the factual matrix of this case and also considering the fact that information was furnished, I am inclined to take a very lenient view of the matter. I feel that imposition of penalty of Rs.5000/- (Rupees five thousand only) would meet the ends of justice.

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

ORDER

The Opponent/P.I.O. is hereby directed to pay Rs.5000/- (Rupees five thousand only) as penalty imposed on him today.

This amount of penalty should be recovered from the salary of P.I.O./Opponent for the month of February 2012 and March 2012 by the Director of Accounts.

A copy of the order be sent to the Director of Accounts, Panaji-Goa for execution and recovery of penalty from the Opponent. The said amount be paid in Government Treasury.

The penalty proceedings are accordingly disposed off.

Pronounced in the Commission on this 29th day of November, 2011.

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

