

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Penalty No. 10/2010

In

Complaint No. 198/SIC/2010

Mr. Ajay E. Vellingiri,
H. No. 61/GL/38,
Behind Old MPT Hospital,
Vasco-da-Gama-Goa

... Complainant.

V/s.

Shri S. V. Naik,
The Then Public Information Officer &
Chief Officer,
Mormugao Municipal Council,
Vasco-da-Gama – Goa

... Opponent.

Complainant absent.
Opponent in person.

ORDER
(25.01.2012)

1. By Order dated 01.06.2010 this Commission (State Information Commissioner, Shri A. Araujo) observed as under:-

“..... In fact, the Order of First Appellate Authority was issued on 25.02.2010 with the directions to the Opponent to provide information within fifteen days from the date of the Order i.e. 19.02.2010. Considering that the fifteen days period from 19.02.2010 completes on 06th March 2010, and the information was provided on 11.03.2010 which was received by the Complainant on 18.03.2010 there is a delay of 12 days which the Opponent is required to explain. Accordingly, a show cause notice is required to be issued to the then Public Information Officer, Shri S. V. Naik to file the reply on the imposition of penalty on 18.06.2010.”

2. In pursuance to the said notice the Opponent/Public Information Officer has filed a reply which is on record. It is the case of the Opponent that the First Appellate Authority was pleased to direct the Public Information Officer to create the records and issue information to the Complainant within 15 days, vide Order dated 25.02.2010. That the said Order dated 25.02.2010 was passed in absence of the Opponent as the Head Clerk of the Office of Mormugao Municipal Council, Shri Satoskar represented the Opponent in view of the exigencies of work at Mormugao Municipal Council, Vasco as well as in Goa Medical College where the Opponent was holding additional charge of the post of Director (Admn.). That the information which was directed to provide within 15 days was not available with P.I.O. as on date of Order, the time limit of 15 days was actually very short time to create the information as requested by the Complainant in view of the procedure involved. That since the matter pertained to illegal construction, the Municipal Engineer was directed to inspect the concerned site and to submit the inspection report, drawing, etc. immediately. However, the said information was placed on the table of P.I.O. on 08.03.2010 and accordingly it was kept ready on 11.03.2010 and hence the time taken by the office of Mormugao Municipal Council was absolutely necessary for creation of the said records and the information was made ready immediately on receipt from technical section. It is the case of the Opponent that although it is true that there is slightly delay of 5 days, i.e. from 06.03.2010 to 11.03.2010, the delay from 11.03.2010 to 18.03.2010 i.e. the delay of 7 days when information was ready which was time taken by Complainant to collect the information may not be clubbed together. That the said delay of 5 days is negligible delay and that, the same was beyond the control of the P.I.O. in view of work pressure. The Opponent has also given reasons to ignore the delay in the reply.

3. It is seen that Complainant initially remained present. Thereafter he was absent. Notices were issued to him however he did not turn up. In any case I shall proceed on the basis of the records.

Opponent had submitted that his reply be considered.

4. I have carefully gone through the records of the case. It is seen that by application dated 04.01.2010 the Complainant had sought certain information. That by reply dated 28.01.2010 the Opponent furnished the information. One of the item i.e. item at Sr. No. 3 was as under:-

“(3). Total areas for extension as traced by your official for the illegal construction of rooms undertaken by Mr. Basappa Chalwadi for his same old existing house.”

The reply is as under:-

“3. Not available.”

It is pertinent to note here that under RTI Act non-existent information cannot be furnished.

The Complainant preferred Appeal before First Appellate Authority. By Order dated 25.02.2010 the First Appellate Authority observed:

“The Appellant has sought information vide letter dated 04.01.2010. The Respondent has replied on 28.01.2010. The Appellant is not satisfied with the reply to issue No.3. The Respondent agreed to undertake site inspection and make the information available within next fifteen days.

Hence, the Respondent is directed to furnish same within 15 days to the Appellant from the date of Order i.e. 19.02.2010.”

Admittedly, information was not there. In fact it is the direction to the P.I.O. to create and furnish the information. Under RTI a P.I.O. is expected to provide the information available with him. He is not required to collect and compile the information on the demands of an information seeker nor is he expected to create a fresh one merely because some information seeker has asked for it.

5. Coming to the aspect of delay. As per Order of First Appellate Authority 15 days complete on 06.03.2010. It appears from Order of the Commission information was provided on 11.03.2010 which was received by Complainant on 18.03.2010. From 06.03.2010 till 11.03.2010 the delay is of 5 days only. The date when it was sent is material. If 18 is considered then there is delay of 12 days. According to the P.I.O he received the information from the Engineer only on 08.03.2010.

Under Section 20(1) of the R.T.I. Act the information Commission must satisfy itself that P.I.O. has without reasonable cause:

(i) refused to receive an application; (ii) not furnished information within the specified time frame; (iii) malafidely denied information, (iv) knowingly given incorrect, incomplete or misleading information and (v) destroyed information/obstructed giving of information.

The case before me is on a different footing. Here, there is some delay in furnishing information which P.I.O. had to create and not the existing information.

I have perused some of the rulings of C.I.C. as well as of some State Information Commissions. The Commissions considered various aspects and held that in view of earnest efforts put by P.I.O., the delay caused becomes excusable and accordingly penalty was not imposed.

In S.P. Arora, S.P.I.O.-cum-Estate Officer, HUDA v/s. State Information Commission, Haryana and Others 2009 (1) ID (Punj. & Hry. High Court) it is observed as under:-

“8. The sequence of events would show that the information was sought on 29.01.2007, when the file of the plot in question was lying with the Bank. The file was received back on 22.02.2007. The same was received on 30.03.2007 and information was supplied on 10.04.2007. The penalty can be imposed only if there is no reasonable cause for not furnishing the information within the period of 30 days. The word ‘reasonable’ has to be examined in the manner, which a normal person would consider it reasonable. The right to seek information is not to be extended to the extent that even if the file is not available for the good reasons still steps are required to be taken by the office to procure the file and to supply information. The information is required to be supplied within 30 days only if the record is available with the office. The inference cannot be drawn of the absence of reasonable cause, for the reason that file could have been requisitioned back from the Bank. Since file was not available with the office the inference drawn does not seem to be justified.

9.

10.

11. In view thereof, we are of the opinion that the Order of imposition of penalty on the petitioner not sustainable in law. Consequently Writ Petition is allowed. The impugned order passed by State Public Information Commission is set aside.”

In Shri Surinder Pal (Advocate) Ludhiana v/s. P.I.O. O/o. Commissioner M.C. Ludhiana [2008]¹ ID 227 (SIC PG) it was observed as under:-

“4. Perusal of the contents of the affidavit dated 20.08.2007 filed by Sh. K. J. S. Kakkar, Medical Officer, M.C. Ludhiana does show that Respondent has been quite diligent in its efforts to procure, compile and deliver the information to the Complainant. We are satisfied that the delay in the delivery of information is neither willful nor deliberate. This is, therefore, not a fit case for the imposition of penalty under Section 20 of R.T.I. Act, 2005, or the award of any compensation to the Complainant

In Brijesh Barthwal, Vikas Nagar, Lucknow v/s Geological Survey of India, Northern Region, Lucknow (Appeal No. CIC/AT/A/2006/00031 dated 10.07.2006) CPIO submitted that the delay was caused by the logistic of collecting the information from several sources, his absence from office on leave and lack of familiarity with the processes under the R.T.I. Act. The Commission observed that the P.I.O. could have kept the appellant periodically posted with the progress of the information gathering process. The Commission held that the reasons for delay seem to meet the test of “reasonable cause” under Section 20.

6. In view of all the above and particularly in view of the fact that information was to be created and furnished, the delay if any should be condoned. Besides, delay is not much. Hence, I pass the following Order:-

ORDER

The show cause notice is discharged and penalty proceedings are dropped.

Penalty proceedings are accordingly disposed off.

Pronounced in the Commission on this 25th day of January, 2012.

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