

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

**Penalty No. 28/2010
In
Complaint No. 21/SCIC/2010**

Mr. Suresh V. Parsekar,
R/o. H. No. 1073/2,
Madhlamaj Mandrem,
Pernem - Goa

... Complainant.

V/s.

1) Public Information Officer,
O/o. Industrial Development Corporation,
EDC Complex, Patto Plaza,
Panaji – Goa

...Opponent No. 1

2) Deemed Public Information Officer,
Dy. General Manager (Admn), Estate Division,
Goa Industrial Development Corporation,
EDC Complex, Patto Plaza,
Panaji – Goa

... Opponent No. 2

3) First Appellate Authority,
Managing Director,
Goa Industrial Development Corporation,
Panaji – Goa

...Opponent No. 3

Complainant in person.

Opponent No. 1 in person

Adv. Smt. A. Bhobe for Opponent No. 2.

ORDER
(27.01.2012)

1. By Order dated 15.10.2010 this Commission issued notice under Section 20(1) of the Right to Information Act, 2005 to the Opponent to show cause why penalty should not be taken against him for causing delay in furnishing information.

2. In pursuance of the said notice the Opponent No. 1 and 2 i.e. Public Information Officer (P.I.O.) and deemed Public Information Officer (A.P.I.O) have filed reply which are on record.

It is the case of Opponent No. 1 that Complainant vide his application dated 25.05.2009 addressed to the Opponent No. 2 requested for certain information. That the Complainant by his reminder letter dated 30.06.2009 addressed to the then P.I.O. once again requested for providing the

information without charging any fees as the information was not provided to him even after a lapse of thirty days. That the P.I.O. vide his letter dated 03.07.2009 informed the Complainant that, as his application was not accompanied with an application fee of Rs.10/-, the same was not processed. He was further requested to make a fresh application accompanied by application fee. The Complainant on 09.09.2009 made a fresh application to the P.I.O. and deposited an amount of Rs.10/- towards processing fee. That the P.I.O. vide his note dated 14.09.2009 forwarded the application of the Complainant to the Opponent No. 2. That the Opponent No. 2 received the said application on 14.09.2009 at 05:00 pm. That the Opponent No. 2 vide his note dated 24.09.2009 received by the then P.I.O. on 29.09.2009 replied stating that the information sought by the Complainant does not fall within the definition of "information" under RTI Act, 2005. That the P.I.O. vide his letter dated 29.09.2009 replied to the Complainant accordingly. That against the said letter/reply dated 29.09.2009 the Complainant preferred an Appeal before Opponent No. 3 i.e. Managing Director, GIDC. That the Opponent No. 3 vide his Order dated 28.10.2009 disposed off the said Appeal directing the Appellant to go through the file for selecting information or seeking information as available with the Corporation. That against the Order dated 28.10.2009 the Complainant preferred an Appeal before the Goa State Information Commission bearing Appeal No. 109/SCIC/2009. By Order dated 30.12.2009 the Commission was pleased to direct the Respondents, i.e. P.I.O. and F.A.A. to furnish the information as requested by the Appellant within twenty days from the date of receipt of the Order. That the then P.I.O. received the above Order on 05.01.2010. That in pursuance of the Order then P.I.O. vide his note dated 05.01.2010 directed Dy. GM (A)/A.P.I.O. to furnish information to him within three days to provide the same to the applicant. That the said note was received by the A.P.I.O. on 08.01.2010 at 11:40a.m. That Dy. GM (A)/A.P.I.O. submitted the requested information to the P.I.O. on 25.01.2010. As 26.01.2010 was a holiday on account of Republic day the then P.I.O. on 27.01.2010 furnished the information to the applicant which was submitted to him by the Dy. GM(A)/A.P.I.O. That the information was provided to the Complainant within the statutory time period. That the Opponent No. 1 denies that there is delay caused in providing information. According to him penalty case is liable to be dismissed.

It is the case of Opponent No. 2 that Opponent No. 2 has filed his reply dated 15.03.2010 in the Complaint and the Opponent No. 2 adopts and relies on the contents of paras 1 to 13 of the said reply in the present reply and the same may be incorporated herein. It is the case of the Opponent No. 2 that this Commission was pleased not to entertain the above said proceedings by observing that the information sought by the Complainant was received by him. That the above proceedings may not be entertained. It is the case of Opponent No. 2 that he has been wrongly implicated by the Complainant, wrongly designating the Opponent No. 2 as Deemed P.I.O. That the proceedings filed by the Complainant apart from being vague do not make out any case of there being any delay. That the Complainant has failed to even remotely indicate that there is delay in furnishing the information and that the same is on account of Opponent No. 2 as alleged or otherwise. That the Complaint is, therefore, liable to be dismissed and notice issued by this Commission is to be discharged. It is further the case of Opponent No. 2 that the Complainant at no point of time after passing the Order dated 30.12.2009 approached the Opponent No. 2 either for collecting the information or for seeking the inspection. That the statements made by the Complainant that the Opponent No. 2 informed that he is not the S.P.I.O. and the Order of the Commission does not bind him is denied as being false. That the Complainant has made frivolous allegations against the Opponent. That the Complainant did not approach the Opponent No. 2 and that this contention is malafide. That the Opponent No. 2 has not violated the Order passed by the Commission. That on 13.04.2005, i.e. the date of hearing/arguments before the Commission the Complainant clarified and specified the details/nature of the information required by him and requested for the same, though not required, the Opponent furnished the information which was clarified/specified to the Complainant and on account of the said request by the Complainant no arguments were canvassed. That having received the information the complainant cannot now contend there being any delay. In any case there is no delay in furnishing the information as alleged or otherwise. That the Complaint filed by the Complainant does not make out any case to attract provisions of Section 20(1) of the RTI Act and as such the proceedings be dismissed and notice issued be discharged.

3. Heard the arguments of the Complainant and Adv. Smt. A. Bhobe for Opponent No. 2.

According to the Complainant complete information as furnished on 27.04.2011.

During the course of her arguments Advocate for Opponent No. 2 argued on similar lines as per the reply and she relied on the reply.

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

It is seen that in Appeal No. 109/SCIC/2009 this Commission passed the Order on 30.12.2009. In para 7 and 8 it is observed as under:-

“7. Coming to the aspect of penalty the same does not arise as P.I.O. as well as First Appellate Authority disposed the application and appeal in time as can be seen from records. It is also a fact that some time has been consumed in the process, therefore, the ends of justice would be met if information is provided free of cost in terms of Section 7(6) of the R.T.I. Act.

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

ORDER

Respondents to furnish the information as requested by the Appellant within 20 days from the date of receipt of the Order.

This information be given free of cost.”

Since information was not furnished, the Complainant preferred Complaint on 28.01.2010. The said Complaint was disposed by Order dated 15.10.2010. In para 5 and 6 of the Order it is observed as under:-

“5. It is now the grievance of the Complainant that even this information has not been furnished within 30 days and that the same was furnished in parts beyond 20 days. However according to the Complainant he has received the entire information.....

6. Now it is to be seen whether there is any delay. According to the Complainant there is delay in furnishing the information. This is disputed by the Opponents. In any case in my opinion, in

this case both the parties should be given an opportunity to establish their stand. Public Information Officer should be given an opportunity to explain and show cause”

5. The Order passed by this Commission dated 30.12.2009 was received by P.I.O. on 05.01.2010. As per Order information was to be furnished by 25.01.2010. As per records the information is furnished on 27.01.2010. The P.I.O. received the information on 25.01.2010 and furnished on 27.01.2010. At the most there is two days' delay. According to the Complainant information was furnished in parts and beyond 30 days. Whereas according to P.I.O. he received the information on 25.01.2010 and since 26th January was holiday he furnished the same on 27.01.2010.

In any case the delay is of two days which appears to be negligible.

6. Under Section 20(1) of the RTI Act the Information Commission must satisfy itself that C.P.I.O./S.P.I.O. has without reasonable cause:

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

In the case before me initially the information was furnished in time. The delay is in complying the Order of the Commission.

7. 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 become excusable and accordingly penalty was not imposed.

In S.P. Arora, SPIO-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.

8. In view of all the above and in view of the fact that information was furnished the delay, if any, being negligible should be condoned. Besides, delay is not much, i.e. of 1-2 days. 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 27th day of January, 2012.

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

