GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Penalty No.24/2010
In
Complaint No. 428/SCIC/2010

Mr. Rudresh S. Naik,
R/o. Radha Bldg., 2nd Floor,
Nr. Market,
Panaji - Goa   … Complainant.

V/s.

Public Information Officer,
Captain of Ports Department,
Panaji – Goa   …Opponent.

Adv. Shri Yogesh Naik for Complainant.
Adv. Shri N. Dias for Opponent.

O R D E R
(07.02.2012)

1.   By Order dated 27.09.2010 this Commission issued notice to the Opponent/Public Information Officer (PIO) to show cause why penalty action should not be taken against him for causing delay in furnishing information.

2.   The Opponent has filed the reply i.e. rejoinder to reply dated 27.09.2010. It is the case of the Opponent that the department received the application of the Complaint through the Inward Entry Register on 15.03.2010. That the Inward Entry Registry sent the said application of the Complainant to the Opponent only on 18.03.2010, however, due to the clerical oversight the Opponent stated in the reply that the application of the Complainant was received on 18.04.2010 instead of 18.03.2010. That there is nothing intentional or deliberate on the part of the Opponent. Besides, Tuesday 16.03.2010 was a Public Holiday on account of Gudi Padwa. That subsequently the Opponent was attending the seminar on the "Hydrological Information System" at the Goa Science Centre, Miramar on Wednesday, 17.03.2010 which is out of the administrative office of the Opponent. That the Opponent received the application of the Complainant only on Thursday, 18.03.2010. That the information had to be sought from the concerned dealing hand of the department under section 5 of the RTI Act without

which the Opponent was unable to furnish the information sought by the Complainant and hence the delay and, therefore, the delay is neither deliberate nor intentional but due to internal office arrangement. That vide application dated 15.03.2010 the Complainant had sought certified copies of the N.O.C./Permission. That since the certified copy of N.O.C./Permission were not available with the Opponent, section 5 of the RTI Act was invoked seeking the said information. That, however, the dealing hand submitted vide an Office Note dated 05.04.2010 to the Opponent stating therein that the Complainant may be requested to inspect the required documents/informations before issuance as the said documents/informations being voluminous for which this Opponent was handicapped and unable to furnish the same to the Complainant. That the information sought was voluminous. That there was no question of harassment. In short according to the Opponent there is no intentional or deliberate delay.

3.   It is seen from the records that Complainant Shri Rudresh S. Naik remained present only on 25.11.2010. Thereafter he remained absent throughout. Notices were issued to the Complainant but he did not care to remain present. Ultimately on 07.02.2012 Adv. Yogesh Naik on behalf of Complainant remained present.

4.   Heard the arguments. Adv. Yogesh Naik argued on behalf of Complainant and Adv. N. Dias argued on behalf of Opponent.

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

Admittedly there is some delay. Even in his reply/rejoinder the Opponent/PIO states that delay was there as he had to get information from other Staff. He also states that information being voluminous inspection was offered to the Complainant but the Complainant did not turn up.

Under Section 20(1) of the RTI Act the Information Commission must satisfy itself that PIO has without reasonable cause (i) refused to receive an application; (ii) not furnished information within the specified time frame; (iii) malafidely denied information; (4) knowingly given incorrect, incomplete or misleading information and (v) destroyed information/obstructed giving of information.

In the case before me it is to be seen whether there was intentional, deliberate delay with malafide objective.

I have perused some of the rulings of Central Information Commission as well as some State Information Commissions and the view held is that delay becomes excusable if the same is not intentional or deliberate.

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 aware 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.   During the course of his arguments Adv. Yogesh Naik representing the Complainant states that information is furnished and that Complainant has no grievance whatsoever. He also reiterates about there being no malafide intention. I have also perused the reply as well as rejoinder filed by the Opponent. The Opponent has narrated how he had to seek information from others. That the Opponent was not the custodian of information. Looking at the material and the reply, it is seen there was no malafide intention on the part of the PIO. In view of the reasons given by PIO and supported by Adv. Yogesh Naik I am of the view that reasons given for delay seem to meet the test of "reasonable cause" as envisaged under section 20 of the RTI Act.

7.   In view of all the above and submissions offered by Shri Yogesh Naik the delay, if any, should be condoned. Hence, I pass the following Order:-

O R D E R

Show cause notice is discharged and penalty proceedings are dropped.

Pronounced in the Commission on this 07th day of February, 2012.

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