

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

**Penalty Case No.36/2011
In
Comp No.524/SCIC/2010**

Shri Shankar P. Parab,
R/o. Dangi Colony,
Alto Dhuler, Mapusa - Goa

... Appellant.

V/s.

Shri Anil Kumar,
Dy. Director (HIB),
PIO, Dte. of Health Service,
Special Cell, Panaji - Goa

... Opponent

Complainant absent.
opponent absent
Adv. H. Naik for opponent present

ORDER
(9/3/2012)

1. By order dated 30/03/2011, this Commission issued notice U/s.20(1) of the R.T.I. Act to the opponent No.2/P.I.O. to show cause why penalty action should not be taken against him for causing delay in furnishing the information.

2. In pursuance of the said notice, the opponent has filed the reply/affidavit in reply which is on record. In short, it is the case of the opponent that the notice issued to the opponent is to be recalled for the mere reason that the information sought by the complainant was not related to P.I.O., Directorate of Health Service. But the same pertains to P.I.O. Public Health Department, Secretariat, Porvorim, Goa and P.I.O. Medical Superintendent of Asilo Hospital, Mapusa, Goa. That penalty proceeding should not be initiated against the opponent because of following reasons:-

(1) That R.T.I. application filed by the complainant dated 12/4/2010 was received in the office of the opponent only on 15/4/2010.

(2) That opponent thereafter transferred the said application vide letter dated 19/4/2010 to the original opponent No.1 by Registered AD and the copy was marked to the complainant.

(3) That the original opponent No.1 retransferred the said application vide letter dated 23/4/2010 to this opponent with the request to furnish information only on the points 2, 3, 4 and 7 of the R.T.I. application.

(4) That the opponent again transferred the said application vide letter dated 27/4/2010 to the Under Secretary, Health, P.I.O., Public Health Department, Secretariat, Porvorim thereby requesting to furnish the information at points No.2, 3, 4 and 7 as the said information was related to their office.

(5) That out of the 10 points of the R.T.I. application not a single point is related to P.I.O. Directorate of Health Service and therefore this opponent was not answerable and accountable to provide the information to the complainant .

It is the case of the opponent that point No.1 to 7 of the said application related to Public Health Department, P.I.O., Secretariat That the information sought is not in the possession of the opponent and the same was not maintained by P.I.O. Directorate of Health Service. That the opponent was not liable to provide the information and also for any delay in view of this above mentioned facts. Besides the complainant should have taken proper recourse as per the R.T.I. Act of preferring first appeal before First Appellate Authority and that complaint ought to have been dismissed.

According to the opponent, complaint is not maintainable and as such penalty proceeding are liable to be dropped.

3. It is seen from record that complainant remained throughout absent. The complainant had sent a letter which was received on 3/1/2011 stating that he has received the information towards his R.T.I. application from Directorate Health Service. He also stated in the said application that if there are Rules to impose fine for harassment for making delay, the same be imposed. On 19/7/2011, notice was issued to the complainant to remain present. However, he did not remain present. Various opportunities were given to the complainant. But he did not care to remain present.

4. Heard advocate Smt. H. Naik for the opponent. According to her information sought pertains to Public Health Department and not related to Directorate Health Service. According to her, even if there is delay, the opponent has given reason in the reply/affidavit. She referred to the facts of the case in detail. According to her the action taken was in good faith and that information is already provided. She next submitted that there were 10 queries but not a single query relates to PIO/ Directorate of Health Service. According to her opponent is not at all accountable and proceeding be dropped.

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

It is seen that by application dated 12/4/2010, the complainant/applicant sought certain information from the Public Information Officer, Directorate of Health Service. The P.I.O. Dy. Director (H.I.B.) Directorate of Health Services transferred the said request to the Dy. Director cum Medical Superintendent, Azilo Hospital, Mapusa, Goa, by letter dated 19/4/2010 and by letter dated 27/4/2010 he transferred the request in respect of points No.2, 3, 4 and 7 of the application to Under Secretary(Health)/P.I.O. Public Health Department, Secretariat,

Porvorim, Goa. On 5/5/2010, the Under Secretary (Health II) furnished the information to point No.2,3, 4 and 7. This is in time.

By letter dated 23/4/2010 the Medical Suptd/Dy. Director, Directorate of Health Service, Azilo Hospital, Mapusa i.e. P.I.O. transferred the request to the P.I.O. Goa Public Service Commission and by another application dated 23/4/2010 transferred the request in respect of point No.2, 3 and 6 to P.I.O. Directorate of Accounts. By letter dated 23/4/2010 the P.I.O./Medical Suptd/ Dy. Director, Directorate of Health Services, Azilo Hospital, Mapusa, retransferred the said application to the Dy. Director (HIB)/P.I.O. Directorate of Health Service for furnishing information for points No.2, 3, 4 and 7 of the application to the party directly and by another letter dated 23/4/2010 transferred the request regarding point No.4 and 7 to P.I.O./Public Health Department, Secretariat, Porvorim. P.I.O. Azilo Hospital furnished the information in respect of point No.1, 2, 3 and 4 by letter dated 14/18-5-2010. Again this is in time. Ultimately by letter dated 7/12/2010 and 8/12/2010 the information i.e. remaining information was furnished.

6. The main contention of the opponent No.1 herein is that the information sought was not with P.I.O. Dy. Director(H.I.B.) Directorate of Health Service, Special Cell, Panaji. That none of the points refer to the opponents and that point No.1 to 7 of the application relates to Public Health Department and not in possession of opponent herein. In short, according to the opponent the information was not with P.I.O./Opponent.

Incidentally P.I.O. Public Health Department is not before this Commission.

7. Admittedly there is delay and there is no dispute on this count.

Under Sec.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 as per the showing of the opponent the information sought was not with the opponent herein but with some other P.I.O. and the opponent obtained the same from that department and furnished to the Complainant/information seeker. In the case before me the information was not existing with the opponent and the delay is not to furnish the existing information.

I have perused some of the rulings of C.I.C. as well as some of 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 issued.

8. In S.P. Arora, S.P.I.O. cum Estate Officer, Hilda V/s. State Information Commission, Haryana and others 2009(1) ID (Punjab & Haryana High Court) it is observed as under:-

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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.

9. In view of all the above and particularly in view of the fact that information was to be obtained from other authority and furnished, the delay if any should be condoned. Besides that Authority having information is not before the Commission. 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 9th day of March, 2012.

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

