

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

**Penalty No.70/2010
In
Complaint No. 424/SCIC/2010**

Mr. Rupesh K. Porob,
Shashi Sadan, H. No.133/3,
Palmar, Pomburpa,
Bardez – Goa

... Complainant.

V/s.

State Public Information Officer,
Dy. Director of Administration,
Office of the Principal Chief Engineer,
Public Works Department,
Altinho,
Panaji – Goa

... Opponent.

**Complainant absent.
Adv. Smt. H. Naik for Opponent.**

ORDER
(08.06.2012)

1. By Order dated 13.12.2010, this Commission issued notice under Section 20(1) of the Right to Information Act, 2005 to the Opponent to show cause why penal action should not be taken against him for causing delay in furnishing information.

2. In pursuance of the notice the P.I.O./Opponent has filed the reply which is on record. It is the case of the Opponent that no notice under Section 21 of R.T.I. Act has been issued. That no penalty action can be taken against this Opponent for the alleged delay caused in furnishing the information to the Complainant as:-

(i) Application under R.T.I. dated 15.02.2010 was received from Shri Rupesh K. Porob seeking various information of 17 points, partly relating to the personal information of Shri Salelkar, EE, Div. XVIII, Ponda, details of tender notices of various works, etc.

- (ii) On 15.02.2010 the Opponent issued letter to SE-III and EE-XVIII calling information under Section 5(4) with copy endorsed to the Complainant.
- (iii) Thereafter on 11.03.2010, the Opponent received reply from EE-XVIII requesting the Complainant to deposit an amount of Rs.1368/- towards the photocopying charges of the documents which is bulky.
- (iv) On 14.03.2010 letter was issued to the Complainant by the Opponent.
- (v) On 14.03.2010 the Respondent issued letter to the Directorate of Accounts as the service records are maintained by them.
- (vi) On 13.04.2010 an appeal was filed by the Complainant before the First Appellate Authority/P.W.D. for non-furnishing the information by Opponent/P.W.D.
- (vii) On 19.04.2010 the F.A.A. issued notice to the Respondent fixing hearing on 03.05.2010.
- (viii) On 03.05.2010 letter was issued to the Complainant to collect the information by paying necessary photocopying charges and information was collected by him.
- (ix) On 02.06.2010 State Information Commission issued notice to the Opponent fixing hearing on 30.06.2010.
- (x) On 29.06.2010 the Opponent issued letter to Director of Vigilance with the copy endorsed to the Complainant, to furnish the information directly to the Complainant as regards point No. 5 of the application.
- (xi) On 29.06.2010 the Opponent issued letter to Director of Accounts with the copy endorsed to the Complainant, to furnish the information directly to the Complainant as regards to point Nos. 1, 2, 3, 4 and 7.
- (xii) On 29.06.2010 Opponent issued letter to EE Div. XVIII to furnish the information directly to the Complainant as regards point No. 9, 12, 13, 14 and 15.
- (xiv) On 29.06.2010 the Opponent issued letter to SE, Circle III, requesting to furnish the information as regards to point No. 6, 7 and 8.
- (xv) On 17.08.2010 information was furnished to the Complainant as regards to point No. 10, 11 and 17 and other information was furnished to the Complainant directly by the concerned P.I.Os. That there is no deliberate and intentional delay on the part of Respondent

to furnish the information. That since the information was voluminous and bulky, the same could not be furnished within the period of 30 days and it took time for the Opponent to gather the information from other departments, which is not situated within the jurisdiction of Panaji. According to the Opponent under the circumstances the notice under Section 20 be revoked.

3. It is seen from the record that initially the Complainant appeared but later on the Complainant remained continuously absent. The Complainant was also absent at the stage of the arguments.

4. Heard Adv. Smt. H. Naik for the Opponent. According to Adv. for Opponent full information is furnished and that too free of cost. Adv. for Opponent argued on similar lines as per the reply.

5. I have carefully gone through the records of the case. It is seen that Complainant sought certain information in respect of one Shri S. S. Salelkar, Executive Engineer, Works Division XVIII (Roads) at Ponda. The information was personal information and also about tenders, major works etc. as mentioned therein. In all there were 17 items i.e. Sr. No. 1 to 17. The information was sought from the P.I.O. the Dy. Director of Administration, Office of Principal Chief Engineer, P.W.D., Altinho, Panaji-Goa. It is seen, that the information was of a third party and the said information was available with various authorities. By letter dated 19.02.2010 the Dy. Director of Administration, P.W.D. forwarded the application to the Superintending Engineer, Circle Office III, P.W.D., Altinho, Panaji and Executive Engineer/S.P.I.O. Div. XVIII P.W.D. Ponda-Goa. Copy of the letter was sent to the Complainant.

On 11.03.2010 Executive Engineer, Office of Executive Engineer, Div. XVIII (Roads), P.W.D., Ponda-Goa furnished the reply. As per the reply points at Sr. No. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13 and 17 were not available. By letter dated 14.03.2010 letter was sent to P.I.O. Directorate of Accounts, Panaji-Goa, to furnish information to points No. 1, 2, 3, 4, 6 and 7 in order to supply the same to the

applicant. On 29.06.2010 the P.I.O. sent letter to Director of Vigilance with copy to the Complainant.

On 17.08.2010 information as regards points No. 10, 11 and 17 was furnished.

If one perused the sequence of events the P.I.O. has sent the request to various authorities in time. Available information has been furnished and what was not available was sent to concerned authorities. This was done after the concerned authority furnished the reply. Naturally there was delay in procuring the information as the application was transferred to other authorities under Section 6(3) of the RTI Act. It is to be noted here that sub-Section 1 of Section 6 expressly requires that a person who desires to obtain information under the Act shall make a request alongwith the prescribed fee to the concerned Public Authority specifying the particulars of the information. Admittedly information was not with the Opponent.

In short information is fully furnished.

6. Under Section 20(1) of the RTI 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 the information which P.I.O. had to obtain from other authorities.

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.

(i) In *S. N. Roy v/s. Life Insurance Corporation of India* (F. No. CIC/AT/C/2009/000417 decided on 31.07.2009) it was observed as under:-

“There was effort made by the Respondents – especially after Appellant filed his Second Appeal – to locate the information corresponding to Complainant’s R.T.I. queries. There has, no doubt, been some delay in providing the information but I am not holding it against Respondents in view of the effort made by them – howsoever late – to find the source of the information and to give it to the appellant.

I, therefore, do not propose to impose any penalty on the C.P.I.O. or draw any proceeding against the Appellate Authority.”

(ii) 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 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 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 in 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.”

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

“4. Perusal of the contents of the affidavit dated 20.08.2007 filed by Shri 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 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.”

(iv) 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)* C.P.I.O. submitted that 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 RTI Act. The Commission observed that the P.I.O. could have kept the Appellant periodically posted with the progress. The Commission held that the reasons for delay seem to meet the test of “reasonable cause” under Section 20.

(v) In *Champa Upreti v/s. State of Uttarakhand through Secretary, Mahila Shasaktikaran Evam Bal Vikas and Others 2011 (1) ID 99 (Uttarakhand High Court)* the information was not given in time. Appeal before F.A.A. was filed and thereafter approached the Chief Information Commissioner, Uttarakhand, Dehradun and filed appeals. The Chief Information Commissioner found that P.I.O. was at fault in not supplying the information in time after obtaining the same from the Directorate of the Department concerned. As to the delay the P.I.O. had given its explanation to the Chief Information Commissioner regarding the fact that she was not in possession of the entire record and it had to be taken from the Directorate. The explanation was not accepted and imposed fine and also directed departmental inquiry. The Hon’ble High Court observed as under:-

“5. This Court after going through the record and considering the submissions of learned counsel of the parties, is of the view that it is not necessary for the Chief Information Commissioner to impose fine and recommend departmental proceedings in each and every case against the public information officer, merely on the ground that there had been some delay in supplying the information. The explanation given by the Officer (present writ petitioner) could not be said to be false. The practical difficulties in supplying the information at a late stage have been brought on record, and in the circumstances of the case, this Court is of the view that it was not just and proper on the part of Chief Information Commissioner to impose fine and recommend departmental enquiry against the present Writ Petitioner.

6. Therefore, this Writ Petition is disposed off with the direction that the impugned Order passed by Respondent No. 4 is quashed to the extent said authority has recommended departmental proceedings against the present writ petitioner and imposed fine of 5000/-. Costs easy.”

12. In view of all the above and particularly in view of the fact that information sought was to be collected, the delay, if any, is liable to be condoned in the factual matrix of this case. 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 08th day of June 2012.

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

