

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

**Penalty No.49/2011
In
Complaint No. 606/SCIC/2010**

Shri Edwin S. Colaco,
R/o. H. No. SF4, 2nd Floor,
Rodrigues Apartments, Behind Edmar House,
Ela, Old Goa

... Complainant.

V/s.

State Public Information Officer,
Department of Social Welfare,
Panaji - Goa

...Opponent.

Complainant absent.
Opponent absent.

ORDER
(21.06.2012)

1. By Order dated 29.06.2011 this Commission issued notice under section 20(1) of the Right to Information Act, 2005 ('R.T.I. Act' for short) to the Public Information Officer ('P.I.O.)/Opponent 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 Opponent/PIO has filed the reply which is on record. It is the case of the Opponent that the Complainant had filed two applications dated 29.06.2010 and 30.06.2010 under R.T.I. Act and that the available information was furnished to the Complainant on 05.08.2010. That the Application of the Complainant dated 10.08.2010 was not received by the P.I.O./Opponent and the same was not traceable in the Department of Social Welfare, however when the Complainant approached the undersigned he was informed about the same and he was requested to provide a copy of the application. That the Complainant refused to provide a copy of the application to the P.I.O./Opponent. That the request to the Complainant for issue of copy of the letter dated 10.08.2010 was verbal and there is nothing on record about the same, however, during the arguments before the Chief Commissioner the Complainant accepted that he has refused to provide copy of the letter dated 10.08.2010 to the P.I.O.. That as per the Order dated 29.06.2011 of the Goa State Information Commission

the information available on record have been issued to the Complainant vide letter dated 12.07.2011 after taking a copy from the records of the Commission. That the information provided to the Complainant initially on 05.08.2010 and again on 12.07.2011 in compliance to the order dated 29.06.2011 of the Commission is same. It is also the case of the Opponent that complaint is filed directly before the Commission without making an appeal before the First Appellate Authority. That the P.I.O. is not solely responsible for delay in furnishing the information as the application dated 10.08.2010 was not received by the P.I.O. from Directorate of Social Welfare. Secondly there was no malafide intention in delaying the information to the Complainant and thirdly the information desired by the Complainant was already received by him on 05.08.2010. According to the Opponent delay be condoned.

3. It is seen from the record that Complainant did not remain present. Various opportunities were given to him but he did not remain present. Initially Opponent remained present and filed reply. Later on he too remained absent. In any case I am proceeding on the basis of record.

4. Admittedly there is delay in furnishing the information. It is the case of the Opponent/P.I.O. that he did not receive the application and when asked the Complainant did not furnish the same. That there was delay as the application was not traceable in the Department of Social Welfare. Information was furnished by taking copy from the Commission. In short the P.I.O. did not receive the application from Directorate of Social Welfare. According to P.I.O. there was no malafide intention.

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 destroyed information/obstructed giving of information.

The case before me is on a different footing. Here the P.I.O. did not receive the application at all. This has been his case throughout. According to him he asked the Complainant to furnish a copy which Complainant refused but there is no written record regarding the same. 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 to be reasonable.

I have perused some of the rulings on the point.

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

**“8.
.....**

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 the 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.”

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

“4. Perusal of the contents of the affidavit dated 20.08.2007 filed by Shri K. J. S. Kakkar, Medical Officer, MC 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 the R.T.I. Act, 2005, or the award of any compensation to the Complainant”

(iii) In *Shri Ravinder Kumar v/s. M.C.D.* (Complaint No. CIC/WB/A/2006/00008 dated 23.05.2006) it was observed that Commission must satisfy itself that P.I.O. has defaulted without reasonable cause before imposing penalty.

In this case there was delay on account of frequent transfer, etc.

5. Looking at the factual backdrop of this case reason given by P.I.O. for delay seems to meet the test of “reasonable cause” under Section 20.

Apart from this the Complainant did not approach First Appellate Authority as contended by Opponent.

In *Reserve Bank of India v/s. Shri Rui Ferreira & 2 Others* (Writ Petition No. 132 of 2011 with Writ Petition No. 307 of 2011 Bombay High Court Goa Bench) the Hon’ble High Court set aside the order of penalty holding the order passed being without jurisdiction as First Appeal was not preferred.

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

ORDER

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

Pronounced in the Commission on this 21st day of June, 2012.

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

