

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi - 110067

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Decision No. CIC/SG/A/2012/000277/18089Penalty

Appeal No. CIC/SG/A/2012/000277

Relevant Facts emerging from the Appeal:

Appellant : Mr. Suraj Kumar Vaidya
A & N peoples Anti corruption forum
No 5 , Quarry Hills, port Blair
A & N Islands

Respondent : Mr. Antony,
Engineering Officer to Chief Engineer & Deemed PIO
Andman Public Works Department
Andaman & Nicobar Administration
Nirman Bhavan, Port Blair
Andaman & Nicobar Islands

RTI application filed on : 31/10/2011
PIO replied : Not replied
First Appeal : 02/12/2011
First Appellate Authority order : Not mentioned
Second Appeal received on : 24/01/2012

Information Sought:

1. Supply the copy property declaration certificates for the period of 1995 and 2011 for the movable and immovable current assets of Shri. Bashkar Biswas, Junior Engineer, F'BND.
2. Supply the copy property declaration certificates for the period of 1995 and 2011 for the movable and immovable current assets of Shri. Chillaparimal, Assistant Engineer, (RCD) APWD.

Reply of the CPIO:

Not replied

Grounds for the First Appeal:

Information has not been provided.

Order of the FAA:

Not mentioned

Grounds for the Second Appeal:

Information has not been provided.

Relevant Facts emerging during Hearing on 27 March 2012:

The following were present

Appellant: Mr. Suraj Kumar Vaidya on video conference from NIC-Port Blair Studio;

Respondent: Mr. D. K. Bhattarcharya, PIO & Executive Engineer (E&M) and Mr. Antony, Engineering Officer to Chief Engineer & Deemed PIO on video conference from NIC-Port Blair Studio;

“The Respondent states that he received the RTI application on 31/10/2011 and immediately sought the assistance of Engineering Officer to Chief Engineer as per Section 5(4) of the RTI Act on

01/11/2011. The PIO states that the information sought by the appellant is held by the Engineering Officer to Chief Engineer. He states that he sent a reminder on 15/11/2011 but did not receive any information. The PIO states that he received the information from Engineering Officer to Chief Engineer on 22/03/2012 and he sent it on the same day to the appellant. The Appellant admits that he received this. The deemed PIO Mr. Antony, Engineering Officer to Chief Engineer states that since the actual information was held by Mr. Hussain Ali, Assistant Director (Administration) he asked him to provide the information. Mr. Hussain Ali provided the information only on 20/03/2012 and hence the delay in providing the information was due to Mr. Hussain Ali.”

Commission’s Decision on 27 March 2012:

The Appeal was allowed.

“The information has been provided as admitted by the Appellant.

The issue before the Commission is of not supplying the complete, required information by Mr. Hussain Ali, Assistant Director (Administration) within 30 days as required by the law.

From the facts before the Commission it appears that the deemed PIO is guilty of not furnishing complete information within the time specified under sub-section (1) of Section 7 as per the requirement of the RTI Act. It appears that the PIO’s actions attract the penal provisions of Section 20 (1). A showcause notice is being issued to him, and he is directed give his reasons to the Commission to show cause why penalty should not be levied on him.

Mr. Hussain Ali, Assistant Director (Administration) will present himself before the Commission at the **NIC-Port Blair Studio** on **26 April 2012 at 4.30pm** alongwith his written submissions showing cause why penalty should not be imposed on him as mandated under Section 20 (1). Mr. Hussain Ali may send his written submissions if he wishes to the Commission by email on rtimonitoring@gmail.com before

If there are other persons responsible for the delay in providing the information to the Appellant the PIO is directed to inform such persons of the show cause hearing and direct them to appear before the Commission with him. If no other responsible persons are brought by the persons asked to showcause hearing, it will be presumed that they are the responsible persons.

Relevant Facts emerging during the showcause Hearing on 26 April 2012:

The following were present

Respondent: Mr. Hussain Ali, Assistant Director (Administration); Mr. D. K. Bhattacharya, PIO & Executive Engineer (E&M) and Mr. Antony, Engineering Officer to Chief Engineer & Deemed PIO on video conference from NIC-Port Blair Studio;

Mr. Hussain Ali denies that he was responsible for providing the information at all. The PIO Mr. Bhattacharya has sought the assistance of Mr. Antony under Section 5(4) of the RTI Act. Mr. Antony claims that he marked it to AD&OS. The RTI Act puts liability of providing the information on PIO but also provides for his seeking assistance from the officer who holds the information as per the provisions of Section 5(4). Section 5(5) lays down that the officer from whom the information is sought would be liable under the RTI Act for providing the information within time. The Act obviously envisages that the officers from whom assistance is sought under Section 5(4) is administratively responsible for providing the information.

Section 5(4) of the RTI Act allows the designated PIO to seek assistance from any other officer to discharge his duties under the RTI Act i.e. to provide information. Section 5(5) of the RTI Act requires that the officer shall render such assistance and where correct and complete information within the time prescribed under Section 7(1) of the RTI Act has not been furnished, he shall be deemed to be the PIO and consequently be liable to be penalised under Section 20 of the RTI Act.

The Commission has noted that in the instant case, Mr. D. K. Bhattacharya, PIO had sought the assistance of Mr. Antony, Engineering Officer to Chief Engineer under Section 5(4) of the RTI Act thereby making Mr. Antony the deemed PIO. However, Mr. Antony failed to submit the complete and correct information within the time prescribed under Section 7(1) of the RTI Act. No reasonable explanation has been given by Mr. Antony for the delay in providing the requisite information. It appears that the actions of Mr. Antony the deemed PIO, attract the penalty under Section 20(1) of the RTI Act. Mr. Antony claims that he tried to obtain the information from other but this is his administrative responsibility and he has failed to discharge it properly.

Section 20 (1) of the RTI Act states, “Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees;

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.”

A plain reading of Section 20 reveals that there are three circumstances where the Commission must impose penalty:

- 1) Refusal to receive an application for information.
- 2) Not furnishing information within the time specified under sub-section (1) of section 7 – 30 days.
- 3) Malafidely denying the request for information or knowingly giving incorrect, incomplete or misleading information or destroying information which was the subject of the request
- 4) Obstructing in any manner in furnishing the information.

All the above are prefaced by the infraction, ‘ without reasonable cause’.

Section 19 (5) of the RTI Act has also stated that “In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.”

Thus if without reasonable cause, information is not furnished within the time specified under sub-section (1) of section 7, the Commission is dutybound to levy a penalty at the rate of rupees two hundred and fifty each day till the information is furnished. Once the Commission decides that there was no reasonable cause for delay, it has to impose the penalty at the rate specified in Section 20 (1) of the RTI Act and the law gives no discretion in the matter. The burden of proving that denial of information by the PIO was justified and reasonable is clearly on the PIO as per Section 19(5) of the RTI Act.

The RTI application was received by Mr. Antony, Engineering Officer to Chief Engineer & Deemed PIO on 03/11/2011 and the information should have been provided to the Appellant before 03/12/2012. Instead the information was provided to the Appellant only on 20/03/2012 i.e. after a delay of more than 100 days. Since no reasonable cause has been offered by the Deemed PIO Mr. Antony the Commission under Section 20(1) of the RTI Act imposes the maximum penalty of ₹25000/- on Mr. Antony, Engineering Officer to Chief Engineer & Deemed PIO.

Decision:

As per the provisions of Section 20 (1) of the RTI Act 2005, the Commission finds this a fit case for levying penalty on Mr. Antony, Engineering Officer to Chief Engineer & Deemed PIO. Since the delay in providing the information has been over 100 days, the Commission is passing an order penalizing Mr. Antony ₹25000/ which is the maximum penalty under the Act.

The Chief Secretary, Andaman & Nicobar Administration is directed to recover the amount of ₹25000/- from the salary of **Mr. Antony** and remit the same by a demand draft or a Banker's Cheque in the name of the *Pay & Accounts Officer, CAT, payable at New Delhi and send the same to Shri Pankaj K.P. Shreyaskar, Joint Registrar and Deputy Secretary of the Central Information Commission, 2nd Floor, August Kranti Bhawan, New Delhi – 110066*. The amount may be deducted at the rate of ₹5000/ per month every month from the salary of Mr. Antony and remitted by the 10th of every month starting from June 2012. The total amount of ₹25000/- will be remitted by 10th of October, 2012.

Shailesh Gandhi
Information Commissioner
26 April 2012

(In any correspondence on this decision, mention the complete decision number.)(PRE)

Copy to:

1. The Chief Secretary
Andaman Public Works Department
Andaman & Nicobar Administration
Nirman Bhavan, Port Blair
Andaman & Nicobar Islands
2. Shri Pankaj K.P. Shreyaskar,
Joint Registrar and Deputy Secretary
Central Information Commission,
2nd Floor, August Kranti Bhawan,
New Delhi – 110066