

GOA STATE INFORMATION COMMISSION
'Kamat Towers' Seventh Floor, Patto, Panaji – Goa

Complaint No. 31/SCIC/2016

Vinay D. Chodankar,
R/o H. No.1522,
Gaonkarwada, Bicholim-Goa. Complainant

V/s

Maria Monserrate,
Dy. Superintendent of Police,
Foreigners Regional Registration Office,
Panaji –Goa. Opponent

CORAM: Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner,

Filed on : 26/04/2016

Disposed on: 26/05/2017

O R D E R

1) The Complainant by his application, dated 29/02/2016 sought information from the Respondent u/s 6(1) of the Right to Information 2005 (**Act** for short). The said application was responded by respondent on 4/03/2016, informing the complaint that functioning of Respondent Public authority i.e. Foreigners Regional Registration Office (**FRRO**), the respondent authority herein, has been taken over by Bureau of Immigration, New Delhi (**BOI**, for short) and that BOI is a repository of data pertaining to Immigration and Registration function and further that BOI is exempted from providing information.

2) A subsequent letter, dated 11/03/2016 also followed from the complainant requesting the respondent, the name and designation of the First Appellate Authority, which was replied by the respondent by

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its reply dated 28/03/2016. In the said letter also the Respondent again informed the complainant that the information sought is exempted.

3) Yet another letter by the complainant which is dated 04/04/2016 was addressed to the respondent inter alia requesting to comply with section 6(3) of the Act, which was also replied by the respondent in the same lines. However, it was informed that his application, dated 04/04/2016 is transferred to BOI.

4) It is with this background that the complainant has approached this Commission with the present complaint seeking penalty in terms of section 20(1) and 20(2) of the Act.

5) On notifying the respondent they filed the reply. It is the contention of the Respondent that as the functioning of the Respondent Public Authority is taken over by BOI, the records are held by BOI which is exempted in providing information under section 24(1) R/W second schedule of the Act. It is also replied that the directions were issued by director IB to dispose the RTI Applications at the end of the Respondents itself. The respondent has also narrated the subsequent correspondence exchanged between the parties and has finally submitted that as per letter, dated 17/11/2014 the RTI Application received at FFRO i.e. the Respondent authority, was forwarded to BOI head quarters.

6) The said reply was countered by the complainant on 28/02/2017 inter alia contending that the replies were signed by DY. S.P., FFRO Panaji and not by PIO of the said office and that the same should be clarified.

7) Subsequently a clarification was furnished by the respondent clarifying that as per the direction of the BOI by its letter, dated 17/11/2014, the application under RTI was forwarded to the BOI. In support of the said clarification the Respondent filed on record the copy of a letter dated 07/03/2017 inter alia intimating that the notice of the present complaint is forwarded to BOI, a letter dated 17/11/2014 from the Intelligent Bureau, a memorandum dated 05/09/2014 a letter dated 27/10/2014.

On going through the records the short point that arises before me is whether the present proceeding can be classified as a complaint under section 18 of the act.

8) For the purpose of considering the claim of penalty and compensation, it would be appropriate to consider the provisions of the act governing the same. Section 18 of The Right to Information Act 2005 reads:

“18. Powers and functions of Information

Commission:- (1) *Subject to the provisions of this Act, it shall be the duty of the Central Information Commission*

or State Information Commission as the case may be to receive and inquire into a complaint from any person:-

(a) who has been unable to submit a request to a Central public information Officer, or State Public Information Officer as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant

Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

9) Thus the act empowers the commission to inquire into complaints which involves only the case as contained at clauses (a) to (f) above. It is nowhere the case of the complainant that he was *unable to submit a request* **OR** that *PIO has refused to accept*

OR that *has refused access* **OR** that *he has not been given a response to a request for information* **OR** that *he was required to pay an amount of fee which he considers unreasonable;* **OR** that *he was given incomplete, misleading or false information* **OR** that *it is a matter relating to requesting or obtaining access to records.*

In the present case the complainant has not pleaded any ingredients of section 18(1) (a) to (f) of the act to invoke the same or the penalty as provided under section 20 or compensation u/s 19(8)(b). Hence to my mind the present proceedings is beyond the scope of section 18 of the act.

10) Even otherwise the grievance of the complaint is twofold. Firstly that the respondent authority has not responded him through the PIO and instead has responded through Dy. SP and secondly that the application was required to be transferred under section 6(3) of the act, if the information was not held by the respondent.

11) Regarding the contention of the complaint that his application under section 6(1) was not dealt by PIO but by DYSP, I find no force therein. The PIO is the representative of the Public Authority and the decision for granting information or rejecting the same lies with the PIO and to be communicated by the PIO. But the duty to transfer the application is cast on the Authority itself u/s 6(3) (i) and (ii), which reads:

"6(3).When an application is made to a public authority requesting for an information----

(i)-----

(ii)-----

The Public Authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer.

Provided that-----"

Considering the above provision ,I do not find any irregularity on the part of the respondent Public authority in transferring the same even under the signature of the other officer namely Dy. S.P.

12) Coming to the second contention regarding the non transferring the application u/s 6(3), it is seen that the complainant has sought certain information from the respondent Authority. In the reply given by the respondent authority it is mentioned firstly that the records are held by BOI and that it is an exempted body under section 24 (1) of the Act R/W second schedule of the act. Even the subsequent applications are dealt with on the same lines. While doing so, as rightly pointed out by the complainant, the respondent Authority has rejected the information held by other authority on the bases of exemption available to such other authority. Such conduct of the respondent authority of assuming powers to deal with the application pertaining to other authority, is not in tune with the act. The only thing that could have been done by the respondent authority is to transfer the application u/s 6(3) to BOI. The orders/instructions issued by any authority to the other regarding the procedure to be adopted for dealing with applications under the act cannot override the act. In the circumstances I find that, inspite of dealing the said application by the Respondent Authority, it was appropriate and necessary that the said application is transferred to the concerned authority i.e. the BOI under section 6(3).

However, this controversy is laid at rest. From the letter, dated 16/05/2016, which is annexed by the Respondent to its reply filed on 28/02/2017, the CPIO of the Intelligence Bureau has informed the complainant that the information as sought for by his applications, dated 29/02/2015, 11/03/2016 and 04/04/2016, cannot be furnished in view of the bar under section 24(1) R/W second scheduled of the act. In the circumstances the grievance of the complainant, that his application under section 6 (1) was not transferred u/s 6(3), no more survive.

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In the above circumstances, I do not find any grounds to proceed with this proceedings. Consequently the same are dropped.

Proceeding closed.

Parties to be intimated.

Sd/-

(Mr. Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa