

**GOA STATE INFORMATION COMMISSION**

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**Complaint No. 14/2020**

Tanisha P. Haldankar,  
Sai Niwas, St. Anthony Prias,  
Anjuna, Bardez-Goa.

.....Complainant

V/S

1. Public Information Officer,  
Directorate of Health Services,  
Campal, Panaji-Goa.

2. The Health Officer/ M.O. Incharge,  
PHC Candolim,  
Directorate of Health Services,  
Candolim, Bardez-Goa.

.....Opponents

**Shri. Vishwas R. Satarkar**

State Chief Information Commissioner

**Filed on: 04/12/2020**

**Decided on: 07/03/2022**

**FACTS IN BRIEF**

1. The Complainant, Tanisha P. Haldankar, r/o Sai niwas, St. Anthony Prias, Anjuna, Bardez-Goa by her application dated 05/10/2020 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought the following information from the Public Information Officer (PIO), Directorate of Health Services, Campal, Panaji-Goa:-

"As an Indian citizen, I am requesting for the following information , Centres-wise in respect of UHC Panaji, PHC Porvorim, UHC Mapusa and PHC Candolim:-

- 1) Total number of applications received from the staff of these centres, seeking permission to work from home.
- 2) Number of applications granted, with names and designation of staff permitted to work from home and the time period for which they have worked from home.
- 3) Type of work performed by the persons permitted to work from home."

2. The Opponent No. 1 transferred said application under sec 6(3) of the Act on 06/10/2020 to PIO's of Urban Health Centre (UHC), Panaji, Primary Health Centre (PHC), Porvorim, Urban Health Centre Mapusa and Primary Health Centre at Candolim as the information related to each of the said centres.
3. The said application was responded by UHC Panaji on 08/10/2020, PHC Porvorim on 14/10/2020 and UHC Mapusa on 06/11/2020.
4. Since the PIO of PHC Candolim did not furnish the information within stipulated period, the Complainant landed before the Commission under section 18(1)(c) of the Act with the prayer to issue direction to Opponent No. 2 to furnish the information and to impose penalty in terms of section 20 of the Act.
5. Parties were notified, pursuant to which the Opponent No. 1, Digambar Kalapurkar, Deputy Director of Directorate of Health Services appeared and filed his reply on 06/04/2021, the Opponent No. 2, Dr. Roshan Nazareth appeared and filed his reply on 29/04/2021.
6. Perused the pleadings, reply, rejoinder and scrutinised the documents on record. In view of rival contention of the parties the point which arises for the determination of the Commission is whether 1) the denial of information to the Complainant by the PIO was malafide and intentional? and 2) whether the citizen, after being denied information, can take recourse to section 18?
7. According to Complainant the Opponent No. 2 deliberately and with malafide intention denied the information and therefore violated the provision of the Act and therefore entails imposition of penalty.
8. Opponent No. 1 through his reply contended that, upon receiving the request from Complainant on 05/10/2020, he immediately on next day i.e on 06/10/2020 transferred the RTI application to the

(i) UHC at Panaji (ii) UHC at Mapusa (iii) PHC at Porvorim and (iv) PHC at Candolim, under section 6(3) of the Act, with the request to furnish the requisite information directly to the Complainant and produced the copy of email print dated 06/10/2020.

9. According to the Opponent No. 2, he never received RTI application of the Complainant through Directorate of Health Services, Panaji either via email or through postal service and that he came to know about the RTI application for the first time, when he received the copy of the notice of the Commission on 19/03/2021. To substantiate his case, the Opponent No. 2 also produced on record the copy of Inward/Outward register of PHC Candolim, with effect from 06/10/2020 till 08/11/2020 and copy of the emails received with effect from 06/10/2020 till 08/11/2020.

10. It is also admitted fact that, besides email letter the Opponent No. 1 did not make any efforts to send the RTI application through postal service from the Directorate of Health Office, Panaji to PHC Candolim.

11. Section 6 of the Act deals with the request for obtaining information, which reads as under:-

***"6. Request for obtaining information.\_\_(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to\_\_***

***(a) the Central Public Information Officer or State Public Information Office, as the case may be, of the concerned public authority;***

*(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her;*

*Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.*

*(2) XXX XXX*

*(3) Where an application is made to a public authority requesting for an information,\_\_\_\_*

*(i) which is held by another public authority; or*

*(ii) the subject matter of which is more closely connected with the functions of another public authority, 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 the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application."*

As can be seen from the above provision, when an application is made to a public authority with respect to a matter which is in exclusive domain of other public authority, the public authority to which such an application is made will transfer the said application to concerned public authority for necessary action.

12. In the present case, the Opponent No. 1, PIO of Directorate of Health Service, Panaji upon receipt of the application transferred the said application to the Health Officer of (i) UHC at Panaji (ii) UHC at Mapusa (iii) PHC at Porvorim and (iv) PHC at Candolim through available email address in a mechanical manner.

It was the bounden duty of the Opponent No. 1 to make sure the recipient's email address is correct before sending the message. Even otherwise, if an email sent was undelivered he would certainly get reply from Mail delivery system (Auto System) with the endorsement "Mail delivery failed: returning message to sender" or similar such message, it means that an email which was sent was not delivered. However the Opponent No. 1 submitted that, he is not personally handling the email correspondence, but the same is handled by another office staff. No matter who handles the email correspondence, it was the duty of the Opponent No.1 to monitor the said application till its logical end. If he found that the said application was not delivered through email, then he could have taken recourse of delivering the application with postal service.

Under section 6(3) of the Act, it was the duty and obligation of the Opponent No.1 to see to it that said application has reached to the concerned PIO to take necessary action. He cannot disclaim his responsibility. It is strange to note that, Opponent No.1 even without confirming the transfer of application, inform the same to the Complainant via speed post. Such a pattern of dealing with RTI application should be undone with. The Opponent No.1 should be more sensitive in dealing with the RTI matter.

13. The Opponent No.2 has raised another issue that, instead of making an appeal to the First Appellate Authority, the Complainant directly approached the Commission and thus violated the procedure.

Section 18(1) of the Act commences with the phrase "subject to the provision of this Act,". This implies that the provision of this section cannot be read independently, and do not an overriding effect. The Act provides certain appellate structure in case the request under section 6(1) is not agreed to section 19 for such relief to be sought since the fundamental right enshrined is to seek information. Therefore if the citizen is not satisfied with the decision of PIO or if he felt that the PIO has refused to furnish the information or has given false, misleading and incomplete information, he has got remedy to approach the FAA. This provision is consciously introduced so as to allow the citizen to exercise his statutory right of appeal to seek information.

The provision of section 18 would come into play only after the citizen has exhausted the remedy provided under section 19 of the Act, in other words, "subject to the provision of this Act" as stipulated in the beginning of section 18. Moreover the citizens prayer to furnish information cannot be considered under section 18 which is also the case in the present matter. Therefore the Complainant's prayer to direct the PIO for providing her information cannot be acceded. Hon'ble Supreme Court in case of **Chief Information Commissioner & Anrs v/s State of Manipur & Anrs [(2011) 15 SCC 1]**, para No. 30 and 31 of the said judgment reads as under:-

*"30. It has been contended before us by the respondent that under [Section 18](#) of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as*

*the case may be, under [Section 18](#) is an order of penalty provided under [Section 20](#). However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.*

*31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under [Section 18](#) of the said Act has no jurisdiction to pass an order providing for access to the information.”*

14. On meticulous reading of the email sent by Opponent No. 1 on 06/10/2020 to Opponent No. 2, it is noticed that the email address is "[phccandolim-heal.goa@gov.in](mailto:phccandolim-heal.goa@gov.in)", however the email box produced by the Opponent No. 2 is of the account "[candolimphc@yahoo.in](mailto:candolimphc@yahoo.in)". When this fact was brought to the notice of Opponent No. 2, he submitted that the email sent on email address by the Opponent No. 1, was not functional and it was under maintenance at relevant time. Apart from that the said email address was linked to the mobile number of Health Officer who at that relevant time was transferred to Primary Health Centre at Betki, Khandola.

The Opponent No. 2, vehemently emphasised that he is not aware of any RTI application, and claimed that PHC Candolim has not received any RTI application of the Complainant via email or through postal service.

Considering the above fact, I find that certain irregularities exist in the working and functioning of public authorities which needs to be addressed by Directorate of Health Services.

15. Further on perusing the letter produced by the Opponent No. 1 dated 06/10/2020 with reference to transfer of RTI application under section 6(3) of the Act, it does not show any confirmation of delivery of email letter to the Opponent No. 2. Except this letter, nothing is produced on record to show that the RTI application dated 05/10/2020 has been received by the Opponent No. 2. In such a case if email is not delivered to the Opponent No. 2, no obligation can be cast upon him to file the reply for dissemination of information.
16. In the present case either the Complainant or Opponent No. 1 failed to prove that default of the PIO beyond all reasonable doubt or that the PIO acted malafidely or intentionally withheld the information. On the contrary it come to force that in the course of hearing he furnished all the information to the Complainant free of cost.
17. Considering the discussion as detailed out above, the right to file complaint under section 18 can only be exercised after exhausting the appellate procedure. Nevertheless, in the present matter, I do not find any malafide intention on the part of PIO to delay the information, and therefore the complaint is dismissed.
- Proceedings closed.
  - Pronounced in the open court.
  - Notify the parties.

Sd/-

**(Vishwas R. Satarkar)**

State Chief Information Commissioner