

# GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 47/SCIC/2010  
(In Appeal No. 78/SCIC/2009)

Rui Ferreira,  
S/o. late Dr. Joao Filipe Ferreira,  
H. No. E-1, Near Panjim Church,  
Panaji - Goa.

..... Complainant.

V/s.

Public Information Officer,  
Mr. D. S. Morajkar,  
Dy. Registrar of Cooperative Societies,  
O/o The Registrar of Co-operative Societies,  
Government of Goa,  
Sahakar Sankul, 4<sup>th</sup> & 5<sup>th</sup> Floor,  
EDC Complex, Patto, Panaji-Goa.

..... Opponent/Respondent.

Complainant in person.

Opponent is also in person.

## **ORDER** **(14-06-2010)**

1. The Complainant, Shri Rui Ferreira, has filed this Complaint praying (a) To direct the Respondent/Opponent to furnish the information sought by the Complainant vide his Application dated 3/4/2009 at point No. 1 thereof and (b) to order inquiry under section 18 of the RTI Act and under section 20 of the RTI Act 2005 and impose a penalty of Rs.250/- per day till the information sought is furnished to the Complainant.

2. The brief facts leading to the present Complaint are as under: -

That the Complainant had filed an application dated 3/4/2009 to the Opponent requesting certain information under the Right to Information Act, 2005 ('R.T.I.' Act for short). That the Public Information Officer (P.I.O.) vide his reply dated 20/4/2009 had merely transferred the said Application to the Chairman – The Goa Urban Co-operative Bank Ltd.

...2/-

H.O. Panaji - Goa. Since information was not furnished by the Opponent the Complainant preferred the First Appeal dated 20/5/2009 before First Appellate Authority. That the First Appellate Authority vide Order dated 21/7/2009 partly allowed the appeal and directed the P.I.O./Opponent to furnish the information at Sr. No. 2 of the original application dated 3/4/2009 but denied the information under Sr. No. 1, 3, 4, 5 and 6 stating that they are not on the records of the Public Information Officer. Being aggrieved by the Order of the F.A.A. the Complainant preferred Second Appeal bearing No. 78/SCIC/2009 before this Commission. Vide Order dated 13/11/2009 the matter was sent back to the Opponent to deal with the same. Accordingly the Complainant approached the P.I.O. in order to seek the information, however, the Opponent refused to furnish the information on the ground that the same is exempt under section 8(1)(a) and 8(1)(e) of the RTI Act as advised by Reserve Bank of India. It is the case of the Complainant that the Opponent is playing a game of hide and seek with the Complainant to harass him in his quest for seeking information under RTI Act. That on earlier occasion the Complainant had received similar information from the office of the Respondent. The First Appellate Authority then had allowed his appeal and P.I.O. was directed to furnish the said information/Report. Since the information has been denied the Complainant has filed the present Complaint on the grounds as set out in the Complaint.

3. The Opponent resists the Complaint and their say is on record. It is the case of the Opponent that the Complaint is not maintainable and that the Complainant has no locus standii to file present Complaint.

On merits it is the case of the Opponent that as regards point No. 3, 4, 5 & 6 it is submitted that the information sought by the Applicant as per his original application dated 3/4/2009 was not available on the record of the P.I.O., the Respondent No. 1 transferred the said application in terms of section 6(3) of the RTI Act to Goa Urban Co-op. Bank Ltd., to furnish the requisite information directly to the applicant and the Applicant was requested to approach the said bank to get the information as desired. That subsequently the Chairman of Goa Urban Co-operative Bank, vide his letter dated 11/5/2009 clarified that the said bank is not public Authority within the meaning of section 2(h) of the RTI Act and expressed his inability to furnish the information as sought by the applicant. The Opponent also refers to First Appeal as well as Second Appeal before this Commission and order dated 13/11/2009 passed by this Commission. It is the case of the Opponent that the Complainant has not approached the P.I.O. within 2/3 days to collect the information and that Opponent had made a letter dated 18/11/2009 informing the Appellant that the information sought by the Appellant by his original Application dated 3/4/2009 under Point No. 1 cannot be furnished since it has been advised by Reserve Bank of India that copy of Inspection Report of the Bank or information contained therein is exempt from disclosure under section 8(1)(e) and 8(1)(a) of RTI Act, 2005. It is further the case of the Opponent that though information is available the Respondent is prevented from releasing the said information in view of the R.B.I. directions. The Opponent denies the allegations of the Complainant in the Complaint parawise in his reply dated 29/3/2010. In short it is the case of the Opponent that due to the advice of Reserve Bank of India the Opponent could not furnish the information and that the Opponent has not withheld the information with malafide intention.

4. Heard the arguments. The Complainant argued in person and the Opponent No. 1 also argued in person. Complainant argued on similar lines as per the memo of Complaint. According to him on earlier occasions he was furnished with similar information. He also referred to the documents on record. According to the Complainant information has been deliberately withheld and that too with malafide intention. According to him prayers ought to be granted.

5. During the course of his arguments the Opponent No. 1 submitted that due to Reserve Bank of India advice they could not furnish information as the same has been exempted under section 8(1)(a) and (1)(e).

6. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The short point that falls for my consideration is whether the information sought at point No. 1 is to be furnished or not?

At the outset I must say that in Appeal No. 78/SCIC/2009 this Commission passed the Order as: -"The Appellant is directed to approach the Public Information Officer within 2 or 3 days on receipt of this Order. The Public Information Officer to provide information available with him....."

By reply dated 18-11-2009 the Opponent No. 1 informed that information sought by the Appellant vide application dated 3-4-2009 under point No. 1 cannot be furnished since it has been advised by the Reserve Bank of India that the copy of inspection report of the Bank or information contained therein is exempt from disclosure under section

8(1)(a) and 8(1)(e) of the Right to Information Act. It was also informed that information at point No. 2 is already furnished to the appellant and in respect of point No. 3,4,5 & 6 their office is not in physical possession of the same and the Appellant's request has been transferred in terms of section 6(3)(ii) of the Right to Information Act to the Goa Urban Co-operative Bank Ltd., Panaji etc.

In short information available with Respondent No. 1 is regarding point No. 1 &2 of which point No. 1 could not be furnished in view of the letter from the Reserve Bank of India. I have perused the said letter dated 4-12-2006. It is from Chief Public Information Officer in reply to the letter from the Opponent's office.

It is pertinent to note here that Opponent has merely quoted the bare clause of the Act for claiming exemption from disclosure of information and this does not imply that reasons have been given. It is not made clear as to how these provisions are applicable nor any justification has been given. In the absence of any reasoning, the exemption under section 8(1)(a) and 8(1)(e) have been applied without any basis.

It is further pertinent to note that this very information has been furnished to the Complainant herein in the past and this is not denied.

7. The rule of the thumb which is to be followed under Right to Information Act is to provide to the applicant/s all the information sought by him/them unless it is specifically exempted from disclosure under the Act. However, even amongst these exempted categories, access to information may be permitted if the public interest in disclosure outweighs the harm to the protected interests.

8. Now I shall refer to section 8(1)(a) and 8(1)(e).-

“8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) Information disclosure of which would prejudicially affect the sovereignty and integrity of India, strategic, scientific or economic Interests of the state, relation with foreign state or lead to incitement of an offence;

(b) .....

(c) .....

(d) .....

(e) Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

.....  
.....”

There is no dispute with the proposition that information disclosure of which would prejudicially affect the sovereignty and integrity of India etc. and information available to a person in his fiduciary relationship is to be denied or withheld. However Public information Officer had not shown satisfactorily as to why the release of such information would affect the above mentioned cases.

9. It would not be out of place if I quote the observations’ of the Hon’ble High Court Delhi in Bhagat Singh V/s Chief Information Commissioner and others 2008 (2) I D 200 (Delhi High Court). In para 12, 13, and 14 it is observed as under: -

“12. The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy. By one fell stroke, under the Act, the maze of procedures and official barriers that had previously impeded information, has been swept aside. The citizen and information seekers have, subject to a few exceptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act. As is reflected in its preambular paragraphs, the enactment seeks to promote transparency, arrest corruption and to hold the Government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein.

13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the

investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See *Nathi Devi v. Radha Devi Gupta* 2005 (2) SCC 201; *B. R. Kapoor v. State of Tamil Nadu* 2001 (7) SCC 231 and *V. Tulasamma v. Sessa Reddy* 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted."

In *Pritam Rooj V/s University of Calcutta and Others*" AIR 2008 Cal 118 a question relating to revealing information regarding exam details came up for consideration and the Hon'ble Calcutta High Court observed:-

"The umbra of exemptions must be kept confined to the specific provisions in that regard and no penumbra of a further body of exceptions may be conjured up by any strained devise of construction".



10. The request of the Appellant is to provide certified copy/copies of 16<sup>th</sup> and 17<sup>th</sup> Inspection Report of the R.B.I., of the said Bank and their compliance Report and secondly copies of Statutory Auditors Report of the said Bank from 1/4/2006 to 31/3/2007 and 1/4/2007 to 31/3/2008. This has been given.

It is to be noted here that by Application dated 25/8/2006, the Complainant had sought 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Inspection Report and this was furnished to him on earlier occasion. Besides there is nothing to show that the Complainant misused the same.

Complainant placed reliance on a order passed in Information Appeal No. 4/2002. Of course this was under old Act i.e. Goa Right to Information Act 1997. In para 5 of the Order it is observed as under:-

"5. The information sought by the Appellant is in respect of the Inspection Report of the R.B.I. pertaining to the Bank. The Respondent already furnished the certified copy of the Statutory Auditor's Report for the year 1.4.1999 to 31.3.2000 pertaining to the Bank. Once a certified copy of this report has been furnished there are no reasons to withheld the Inspection Report of R.B.I. which is on the same lines of the Statutory Auditors Report. The very fact that the R.B.I. has mentioned that the report is confidential does not mean that this information cannot be furnished under the Act. The Respondent had not indicated in what manner the report should be withheld, so also just because the Respondent stated that the report is not in public interest, the same cannot be withheld. The Respondent

must indicate that any of the restrictions provided under Section 5 of the Act is attracted so as to deny the Appellant the information sought.”

In view of this factual backdrop of the case, I am of the opinion that the request of the Complainant could be granted.

I am also fortified in this view by the rulings of the Central Information Commission to which I shall refer hereafter.

11. Shri Ravin Ranchchodlal Patel V/s. Reserve Bank of India [Decision No. 241/IC(A)/2006 F. No. CIC/MA/A/2006/00604 dated 6/9/2006] the Appellant had sought for certain information regarding his complaints against a Co-operative Bank named Saraspur Nagrik Sahakari Bank Ltd. Specifically he had asked for copies of correspondence between R.B.I. and the said Bank and copies of inspection Reports with action taken by the Bank etc. Respondent supplied part of information and claimed exemption under section 8(1)(e). The Commission decided as under: -

“5. The RBI, as a regulatory authority, has access to information that are in possession of the financial institutions, which fall under the purview of RBI’s regulations for operation of their activities. Under Section 2(f) citizens may have access to “information relating to any private body which can be accessed by a public authority under any other law for time being in force.” Accordingly, the CPIO of RBI is directed to disclose the copy of inspection report, prepared by the RBI, to the appellant, after due application of section 10(1) within 15 working days from the issue of this decision.”

Ms. S. Umapathi V/s. Reserve Bank of India [Appeal No. 348/ICPB/2006 F. No. PBA/06/356 dated 20/2/2007]. The Appellant is an official of State Bank of Saurashtra (SBS). There had been loss of a draft book in the branch in which the Appellant was working as the D.D. issuing official. On investigation of the loss, disciplinary action has been initiated against erring officials including the Appellant. Three letters of complaint on the working of S.B.S. had been sent to R.B.I. on 6/1/2006, 7/4/2006 and 26/4/2006. In connection with these Complaints certain information was sought such as status and progress made by R.B.I. in connection with complaints copies of correspondence between S.B.S. and R.B.I., Action taken, reason for delay and why R.B.I. has not initiated any investigation. C.P.I.O. relying on section 8(1)(e) of RTI Act declined to furnish the said correspondence. The C.I.C. held that since the C.P.I.O. has furnished copies of the correspondence received from S.B.S., there is no reason as to why copies of letters written by R.B.I. on the complaints of the Appellant to S.B.S. should not be furnished and accordingly directed the C.P.I.O. to furnish copies of the correspondence sent by R.B.I. to S.B.S.

In Madhav Balwant Karmarker, Pune V/s. R.B.I., Department of Administration and Per. Management, Mumbai, [Case No. 243/IC(A)/2006 F.No. CIC/MA/A/2006/00406 dated 6/9/2006] where information regarding inspection by the R.B.I. under Banking Regulation Act in respect of Rupee Co-operative Bank Ltd., Pune sought, the inspection reports are an outcome of R.B.I. activity and circulars issued thereafter fall under public domain. The Commission held that exemption under section 8(1)(e) on the ground of fiduciary capacity not available and information may be furnished after due application of section 10(1).

In view of all the above, I am of the opinion that the request of the Complainant is to be granted.

12. Now I shall refer to the objection of the Opponent regarding maintainability of the Complaint. In the case before me the situation is that the case was remanded under certain circumstances. Thereafter the said information was partly granted and information at point No. 1 was rejected in terms of section 8(1)(a) and 8(1)(e) as advised by R.B.I. Thereafter this Complaint is filed. The ground of rejection according to P.I.O. is valid. Even assuming the ground is not valid yet the fact remains that good or bad P.I.O. acted within law. The remedy lies of First Appeal.

I have perused some of the rulings of C.I.C. on the point. In a case [Appeal No. ICPB/A-16/CIC/2006] it was held that since the Appellant has not preferred any appeal before the F.A.A. on the decision of CPIO after he received the same, he should do so at the first instance before approaching the Commission. In two other cases the Central Commission has refrained from entertaining appeal directly filed against the order of C.P.I.O. and has advised the Appellant to first file an appeal under section 19(1) with the Senior Officer.

Normally such type of complaint is not maintainable. However, in the instant case I am inclined to grant the relief firstly because the Complainant had followed the prescribed procedure and the case was remanded and Commission had passed the order to that effect. The Complainant has approached as the P.I.O has not followed the order. And secondly because the R.T.I. Act is people friendly and user friendly Act and to deny the information on such ground is not in the true spirit of RTI Act. However, this will not be cited as a precedent. This is in the factual

matrix of this case only.

13. Complainant vehemently presses for the penalty. There is no delay as such. Rejection on that ground is not malafide. Besides since I have come to the above conclusion the question of penalty does not arise.

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

“The Opponent is directed to furnish the information sought by the Complainant vide his application dated 3/4/2009 at point No. 1 thereof, within 15 days from the date of receipt of the Order.”

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 14<sup>th</sup> day of June, 2010.

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



