

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.148/SCIC/2010

Shri Kashinath Shetye,
Bambino Building, Alto-Fondvem,
Ribandar, Tiswadi – Goa.

..... Complainant.

V/s.

1) The Public Information Officer,
Registrar, District and Sessions Court,
North Goa, Panaji –Goa.

..... Opponent No.1

2) The First Appellate Authority,
District Judge –1 North Goa,
Panaji –Goa

..... Opponent No.2

Complainant in person.

Opponent in person.

ORDER
(26-08-2010)

1. The Complainant, Shri Kashinath Shetye, has filed the present Complaint praying that the information as requested by the Complainant be furnished to him correctly free of cost as per section 7(6), that penalty be imposed on Public Information Officer as per law for denying the information to the Complainant; that compensation be granted; that inspection of documents may be allowed; that no fees may be charged that application in Form 'A' and self addressed envelope be quashed.

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

That the Complainant had filed an application dated 11/01/2010 under Right to Information Act ('RTI' Act for short) thereby requesting Public Information Officer ('PIO') to furnish certain information as per the

...2/-

application of the complainant and further the Complainant was informed to submit his application in form 'A'. That the appeal was filed before the First Appellate Authority/Opponent No.2 and the same was disposed off. It is the case of the Complainant that Opponent No. 1 failed to furnish the information as per the application of the Complainant and further the Complainant was informed to pay charges of Rs. 5/- per page by misinterpreting the rules. That the Complainant paid Rs. 5/- per page. Being aggrieved by the said order the Complainant has preferred the present Complaint on the grounds as set out in the Complaint.

3. The Opponents resist the Complaint and the reply of the opponent No. 1 is on record. It is the case of Opponent No. 1 that in exercise of powers conferred under section 28 of Right to Information Act 2005, the Hon'ble the Chief Justice of Bombay High Court at Mumbai being the competent Authority has made the Rules called the Goa Daman and Diu and Dadra & Nagar Haveli District Court, Right to Information Rules, 2009 to enforce the provisions of the said Act. That the above Rules are published in the State Government official Gazette, at Series I No. 25 dated 17/09/2009. That the fees are charged as per Rule 10(1) and Rule 16 of the said rules. That the Opponent No. 1 has, therefore, not violated any provisions of the Right to Information Act in charging the fees for the information sought by the Complainant. It is the case of the Opponent No. 1 that the application of the Complainant was not in prescribed form "A" as mentioned in chapter II clause 4 of the Rules framed by the Hon'ble High

Court. That the Complainant was informed to submit a fresh application as per form 'A' of the Rules without any court fees. That the Complainant thereafter preferred an appeal however appeal was disposed off and the Complainant filed the application in Form "A". That fresh application was filed and that fees were charged as Rs. 5/- per page as per rule 16 of the Rules framed by Hon'ble High Court. That the information was sought on 28/01/2010, the same was kept ready on 04/02/2010 and the same was collected by the Complainant on 18/02/2010 i.e. within 30 days. The Opponent No. 1 specifically denies the grounds mentioned in the Complaint. In short it is the case of the Opponent no. 1 that information sought was furnished and the copy of the application was forwarded to another authority. That there is no violation of section 18(1) (a) and (b) and that complaint is not maintainable.

4. Heard the arguments. The Complainant argued in person and the opponent also argued in person.

According to the Complainant fees should be in accordance with the Right to Information Act. He argued in detail in that regard.

According to the Opponent they have followed the rules as framed by the Hon'ble High Court.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the prayers are to be granted or not?

It is seen that the Complainant filed an application dated 11/01/2010 before Public Information Officer registrar, sessions and District Court, Panaji –Goa seeking certain information. The information consisted of certain copies of documents and inspection of all files. By letter dated 13/01/2010 the Public Information Officer/Opponent No. 1 informed the Complainant to furnish the application as per Form "A". The Complainant preferred First Appeal bearing No. 2/2010. The First Appellate Authority passed the order dated 28/01/2010 thereby disposing the appeal. It appears that the Complainant herein showed willingness to submit the application in Form 'A' and in fact submitted the same. Exhibit D is the said application dated 28/01/2010 in Form A and information sought is at Exhibit E. it is seen that by letter dated 28/01/2010 Public Information Officer/Opponent No. 1 forwarded the application under section 6(3) to the Hon'ble Registrar General Appellate side Bombay 400032 in respect of point No. 4,5 and 6 of the said application and another application was sent to Principal District Judge South Goa Margao. Information was furnished in respect of point No. 1 and 3 vide letter dated 04/02/2010. it is seen point No. 2 was struck down and point No. 4,5 and 6 were transferred. Though the complainant claims in the complaint that information is not furnished, it is seen from the records that information has been furnished and that too in time.

6. The main grievance of the Complainant appears to be that order passed is against Right to Information Act as excess fees are charged for information and that rules cannot over write the Act and in the present

case Right to Information Act has been overwritten by the Goa, Daman and Diu and Dadra Nagar Haveli District Court, Right to Information Act rules 2009.

It is to be noted here that under section 2(E) "competent Authority" means.....

- (i) the speaker in the case of the House of the people or legislative Assembly of a State or a Union Territory having such Assembly and the Chairman in the case of the Council of states or Legislative Council of a State;
- (ii) the Chief Justice of India in the case of the Supreme Court;
- (iii) the Chief Justice of High Court in the case of High Court;
- (iv) the President or the Governor, as the case may be, in case of other Authorities established or constituted by or under the constitution.
- (v) The administrator appointed under article 239 of the Constitution.

Under section 28 of Right to Information Act the competent authority is vested with powers to make rules to carry out the provisions of the Act particularly on matters, namely:-

- (i) the cost of medium or print cost price of the materials to be disseminated under sub section (4) of the Section 4;
- (ii) the fee payable under sub-section(1) of section 6;
- (iii) the fees payable under sub-section (1) of section 7; and
- (iv) any other matter which is required to be or may be prescribed.

Reading of the section makes it clear that the fee payable under sub-section (1) of section 6 and 7 is required to be prescribed by the competent authority by Rules provided to carry out provisions of this Act. The Hon'ble Chief Justice of the High Court is the Competent authority of the High Court. As per this Scheme it makes clear that in no way High Court is governed by Goa Right to Information Rules regarding fee. And the Competent Authority has published the rules.

It is pertinent to note here that rules made by Central Govt. are to be laid before each house of Parliament. There is no such requirement in the case of rules formulated by competent Authority. However the rules made so need to be notified in the official Gazette.

Sometime we find and also read about different fees by different authority. However it is not a good omen for the Right to Information Act to have different fee structure. No doubt some corrective action is needed in this direction.

7. I have perused some of the rulings of the Hon'ble Supreme Court and the Hon'ble High Court of Bombay. The rule of law now crystallized by these rulings is that the rule cannot be inconsistent with or overriding the Act. The rules made under the Act must be construed consistently with the Act and no rule could be made which would override the provisions of the Act itself.

In an old ruling (P.V. Sivarajan V/s Union of India AIR 1959 SC556 it was held that the validity of rules can be successfully challenged if it is

shown that they are inconsistent with the provisions of the Act, or they have been made in excess of the powers conferred on the rule-making authority of the Act itself.

In District school Board of North Kanera V/s Parameshwar Gattu Naik AIR 1943 Bom 268, the Hon'ble Bombay High Court pointed out that the rules made under the Act must be construed consistently with the Act. No rules could be made which would override the provisions of the Act itself.

8. In have also perused some of the rulings of Central Information Commission and also State Information commissions on the point.

(i) In S.C. Sharma V/s High Court of Delhi (Appeal No.CIC/WB/A/2008/00038 dated 15/01/2008 decided on 07/08/2009) the issue raised by Appellant Sharma was regarding the fees charged in appeal. No fee mandated in law for Appeal under section 19(1) or (3). It was observed by C.I.C as under:-

"In this case, therefore, the High Court of Delhi is well within its authority to prescribe such a fee, keeping in mind only the requirement of proviso to sub-section (5) of section 7 that fee is reasonable in as much as it may be in reference to section 6(1) or sub-section (1) and (5) of section 7.

(ii) In S. C. Agrawal V/s Delhi High Court (Complaint No. CIC/WB/C/2008/008712872 dated 22/09/2008 decided on 10/07/2008) the issue was whether Delhi High Court has the authority to fix a fee of Rs. 50/- per application which DOPT vide its notification GSR No.336 dated 16th September 2005 has prescribed a fee of Rs. 10/-

The Commission observed, " in both these cases the appropriate 'Competent' authorities have published the rules. This Commission has no jurisdiction to rule on the mater.

In the result both the Complaints were dismissed.

(iii) In Vijay Pal Singh V/s High Court of Delhi (Appeal No. CIC/WB/A/2007/00975 dated 06/06/2007 decided on 21/11/2008) fee of Rs. 500/- appears to have been recovered.

It was observed that the fee of Rs. 500/- recovered was also in accordance with Delhi High Court Right to Information Rules as applicable at that time.

(iv) From the order of C.I.C. in Mahabir Singh V/s Municipal Corporation of Delhi (Appeal N. CIC/WB/A/2007/00114 decided on 17/01/2008) it becomes clear that rules for application fee in the Hon'ble Supreme Court are different.

9. Under section 28 the competent Authority may, by notification in the official Gazette, make rules to carry out the provisions of this Act. It is to be noted here that the Commission is not a Court of plenary Jurisdiction but exercises limited jurisdiction conferred by the RTI Act 2005. The Commission can, therefore, exercise only those powers as are expressly or by necessary implication conferred upon it by the statute under which it is constituted. Commission cannot declare any such rule as utravires as made by the Competent authority.

10. I have also perused the rules framed by some of the High Courts of the country and I find that there is slight variation. However, I need not refer to the same herein.

No doubt the Complainant has a genuine grievance, however, the Complainant should agitate the same before the Competent forum or should bring this fact before the Competent authorities who made the rules. It is for the concerned Authority, Hon'ble Chief Justice, High Court of Judicature at Bombay to see that rules are in conformity with the spirit of R.T.I. Act. It should not look that rules are a negation of the right of the citizen to have information. This Commission can only request the concerned Authority, which is hereby done.

11. Since, information is furnished no further intervention of this Commission is required. Regarding penalty and compensation the question does not arise as the procedure was in time. Prayers (v) (vi) and (viii) cannot be granted in view of all the above.

12. In view of all the above I pass the following order:-

ORDER

No further intervention of this Commission is required.

The Complaint is disposed off.

Pronounced in the Commission on this 26th day of August 2010.

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

