

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 150/SCIC/2010.

Shri Kashinath Shetye,
R/o Bambino Bldg,
Alto Fondvem, Raibandar,
Tiswadi –Goa.

... Complainant.

V/s

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

... Opponent No.1.

2) The First Appellate Authority,
District Judge-I North Goa,
Panaji – Goa.

... Opponent No.2.

Complainant present 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 the penalty be imposed on the Public Information Officer as per law for denying the information to the Complainant; that compensation be granted as for the detriment faced by the complainant for not getting the information and also for harassment caused; that inspection of documents may be allowed as per rules; that no fees may be charged for first appeal; application in Form "A" may be quashed and set aside as it is against the Right to Information Act and that self addressed envelope bearing postal stamps may be quashed and set aside as it is against the Right to information Act.

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

That the Complainant has filed an application dated 28/01/2010 under Right to Information Act 2005('RTI' Act for short) thereby requesting the Public Information Officer ('PIO') to issue information specified therein. That the Public Information

...2/-

Officer/Opponent No. 1 failed to furnish the required information as per the application of the complainant and further the Complainant was informed to submit his application in form 'A'. It is the case of the Complainant that Public Information Officer/Opponent No. 1 failed to furnish the required information as per the application of the Complainant and further the Complainant was informed to pay the charges of Rs. 5/- per page by misinterpreting the Rules. That the Complainant has paid Rs. 5/- for each page. Being aggrieved, the Complainant filed this complaint on various grounds as set out in the Complaint.

3. The Opponent resists the Complaint and the say of Opponent No. 1 is on record. It is the case of the Opponent No. 1 that in exercise of powers conferred under section 28 of the Right to Information Act, 2005 the Hon'ble Chief Justice of Bombay High Court being the competent authority has made the rules Goa, Daman & Diu and Dadra & Nagar Haveli District Court, Right to Information Act Rules 2009 to enforce the provisions of said Act. That the said rules are published in the State Government Official Gazette, Series I No.25 dated 17/09/2009. That the fees are being charged as per Rule 10(1) and Rules 16 of the said Rules. That the Opponent, admits the application dated 28/01/2010 filed by the Complainant under Right to Information Act. That the said application was not in prescribed form as mentioned in chapter II clause 4 of the rules framed by Hon'ble High Court and therefore the Complainant was requested to submit the application in prescribed format and accordingly the Complainant has submitted the application in the prescribed format on the same day. It is the case of the Opponent No. 1 that the Complainant was intimated vide letter dated 26/02/2010 to deposit fees of Rs. 435/- @ Rs. 5/- per page computed as per Rule 16 of the Goa, Daman and Diu and Dadra & Nagar Haveli District Court, Right to Information Rules 2009 That the Complainant received the said letter on 05/03/2010. The Opponent No. 1 denies that they contravened section 18 of the Right to Information Act. It is further the case of the Opponent No. 1 that the

available information was kept ready on 04/02/2010 and the Complainant collected the same on 18/02/2010 i.e. within 30 days. That the Complainant charged fees as per rules framed by the Hon'ble High Court and violation of section 18 of Right to Information Act. That the Opponent No. 1 has secured the information from all the Courts in North Goa District and kept for delivery on 26/02/2010. That since the information which was held by another authority, the copy of the Complainant's application in Form 'A" was forwarded to the Hon'ble Principal District & Session Judge, South Goa, Margao vide letter dated 28/01/2010 under intimation to the Complainant to forward point wise to the Complainant. It is also the case of the Opponent No. 1 that Complainant never denied any access to any information under Right to Information Act. That the Complainant have taken inspection of the information on 14/02/2010. However, he has neither deposited the fees nor collected the information inspite of repeated telephonic intimation given to him on 26/02/2010 and 04/03/2010. It is the case of the Opponent No. 1 that he has acted well within the Rules framed by the Hon'ble High Court, which are binding on him. That no First Appeal has been preferred and the Opponent No. 2 is wrongly made as the party. According to the Complainant the complaint be dismissed.

4. Heard the Argument. The Complainant argued in person and the Opponent also argued in person. Both sides advanced elaborate arguments. The sum and substance of the argument of the complainant is that fees should be in accordance with Right to Information Rules and that rules cannot over write the Act. 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 relief prayed can be granted or not?

It is seen that Complainant, vide application dated 28/01/2010 sought certain information. It appears that application was filed in the prescribed format as the Complainant was told to do so. It is seen that by letter dated 26/02/2010 the Public Information Officer informed the complainant about the fees i.e. fee towards the information being Rs. 435/- @ Rs. 5/- per page computed as per Rule 16 of Goa Daman & Diu and Dadra & Nagar Haveli District Courts, Right to Information Rules 2009 published in the official Gazette, Government of Goa on series I NO. 25 dated 17/09/2009 and postal charges Rs. 155/- approximately.

It is seen that by letter dated 28/01/2010 a copy of the Application was sent to Principal District & Sessions Judge South Goa, Margao. It appears that the information which was available with the Opponent No. 1 was kept ready on 04/02/2010 and the Complainant collected the same on 18/02/2010 i.e. within 30 days. From the tenor of the reply of the Opponent No. 1 information was kept ready but the Complainant did not collect the same.

6. The main grievance of the Complainant appears to be that excess fees are charged for information and not as per section 7 (3) a and further the rules cannot overwrite the Act and in the present case the 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:-

...5/-

- (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.

It is seen that different fee by different authority has been prescribed. However it is not a good omen for Right to information Act to have different fee structure. No doubt some corrective action is needed in this direction.

7. I hope perused some of the rulings of the Hon'ble Supreme Court and the Hon'ble High Court of Bombay. The rule of Law now crystalised 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/sUnion of India AIR 1959 SC 556) it was held that 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 Kanara 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 rule 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.

...7/-

(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 *ultra vires* 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:-

O R D E R

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

