

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.149/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 present in person.

Opponent in person.

ORDER
(26-08-2010)

The Complainant, Shri Kashinath Shetye, has filed the present Complaint praying that the information as requested by the Complainant be furnished to him correctly and 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; that inspection of documents be allowed as per rules; that no fees may be charged for First Appeal and application in Form 'A' may be quashed and set aside as it is against Right to Information Act.

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

That the Complainant had filed an application dated 09/11/2009 under Right to Information Act 2005('RTI' Act for short) thereby requesting Public Information Officer ('PIO' for short)/Opponent NO. 1 to issue information specified therein. That the PIO/Opponent No. 1 failed to

...2/-

furnish the required information as per the application of the Complainant, and further the Complainant was informed to submit his application in Form 'A'. Being not satisfied the Complainant filed the appeal before the First Appellate Authority/Opponent No. 2 who disposed off the appeal. It is further the case of the Complainant that the 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 charges of Rs. 5/- per page by misinterpreting the rules and that the complainant paid the same. Being aggrieved by the said order the Complainant has filed the present complaint on various grounds as set out in the Complaint.

3. The Opponents resist the Complaint and the say of the 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 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 said Rules are published in the State Government Official Gazette, at series No. 25 dated 17/09/2009. That the fees are charged as per Rules 10(1) and Rule 16 of the said Rules. That the Opponent No. 1 has not violated any provisions of Right to Information Act in charging fees from the Complainant. That the Complainant has made an application dated 09/11/2009 under Right to Information Act which 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 Opponent No. 1 was designated as Public Information Officer by the Hon'ble High Court vide Notification dated 30/11/2009 published in the State Government official Gazette at series II No. 40 dated 31/12/2009. That the Complainant by letter dated 13/01/2010 was informed by Registered post to submit a fresh application as per Form 'A' of the Rules, without any Court fees. That being not satisfied the Complainant preferred First Appeal before the First Appellant Authority. That after

hearing the parties the Appeal was disposed off and the Complainant submitted the application in Form 'A'. That the Complainant collected the information on 18/2/2010 by paying fees of Rs. 5/-. The Opponent denies that they contravened the section 18 of the Right to Information Act. That the information was furnished within 30 days. It is also the case of the Opponent that they charged the fees as per the Rules framed by Hon'ble High Court. That information sought was furnished to the Complainant and the Complainant himself deleted information sought at Sr. No. 2 of his application dated 09/11/2009 and hence no information was provided regarding the same. That application in respect of some points was forwarded to Hon'ble High Court. In short according to the Opponent there is no ground to file the present Complaint.

4. Heard the arguments. The Complainant argued in person. Opponent No. 1 also argued in person. Both sides advanced elaborate arguments. The sum and substance of the arguments of the Complainant is that fees should be in accordance with Right to Information Act and that rules cannot overwrite the Act.

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 reliefs prayed are to be granted or not?

It is seen that the Complainant filed an application dated 09/11/2009 seeking certain information. It appears that no information was furnished within the statutory period of 30 days. So the Complainant preferred an appeal before the First Appellate Authority. By order dated 28/01/2010 the appeal was disposed off. In para 4 of the order it is mentioned:- the Appellant disclosed that there are mistakes in the format itself, however, while considering the arguments the appellant showed willingness to submit the application in Form 'A'. " Accordingly appeal was disposed and the Complainant filled the said Form 'A' on 28/01/2010.

The information was furnished on 04/02/2010. The information was furnished in respect of point (1) and (3). Considering the date of the application information is in time.

It is seen that by letter dated 28/01/2010, the Public Information Officer/Opponent No. 1 forwarded the application under section 6(3) to the Hon'ble Registrar General High Court 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. It is seen the Opponent No. 1 furnished information in respect of point No. 1 and 3 and that point No. 2 was struck down by the Complainant and other points 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 fee 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 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/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 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 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 matter.

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 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 RTI Act. It should not look that rules are a negation of the right of 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

