

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 430/SCIC/2010

Dr. Ketan S. Govekar,
R/o Wadji Building,
St.Inez, Panaji –Goa.

... Complainant

V/s

The Public Information Officer,
Goa University,
Taleigao Plateau.

... Opponent.

Complainant in person.
Adv. A. Agni for the Opponent present.

O R D E R

(21/09/2010)

1. The Complainant, Dr. Ketan Govekar, has preferred this 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 Public Information Officer be asked to furnish the list of all the Colleges alongwith their names to whom he had transferred the application under section 6(3) of the Right to Information Act; that permission be granted for making Public Information Officers as parties to this Complaint; that penalty be imposed as per law on the Public Information Officer of Goa University as well as the Public Information Officers of all other Colleges who have failed to provide the information sought; that compensation be granted to the Complainant as for the detriment faced by the Complainant for not getting the information and also for harassment caused.

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

That the Complainant had filed an application dated 2nd March 2010 under Right to Information Act 2005 ('RTI' Act for short) thereby requesting the Public Information Officer ('PIO' for short) to issue information specified therein. That the Public Information Officer by letter No. 1/23/10-Acad-I/5541 dated 11/3/2010 informed the Complainant by way of marking a copy that the Application of the Complainant dated 02/03/2010 has been transferred to "All the Affiliated Colleges of Arts, Science and Commerce" under section 6 (3) of the Right to Information Act. It is the case of the

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Complainant that the Public Information Officer failed to transfer the said application under section 6(3) of the Right to Information Act within the stipulated five days as is required under section 6(3) of the Right to Information act. That the Public Information Officer failed to inform the Complainant the names of all the affiliated Colleges to whom he had transferred the application under section 6 (3) of the Right to Information Act and hence is in violation of the provisions of the Act. It is further the case of the Complainant that he received information from some colleges (names of which mentioned in the Complaint) and remaining Colleges have not yet given the said information. That the Public Information Officer failed to provide information to query No. 2 of the application for information as regards action initiated/taken against the Colleges which reveal that there is a failure on their part to implement the said notification of Goa University. Being aggrieved by the denial of the information the Complainant has preferred the present complaint on the grounds as set out in the Complaint.

3. The Opponent resists the Complaint and the written statement is on record. It is the case of the Opponent that the Complaint is not maintainable. That no appeal is filed before the First Appellate Authority. That the scope of section 18 is totally different and when the Complainant has already approached the Public Information Officer for information it is not possible to bye-pass the machinery available under Right to Information Act, 2005 in the form of Appeal and approach this Commission under section 18 of the Right to Information Act. That the queries as contained in the application dated 02/03/2010 was wrongly addressed to Public Information Officer Goa University and in fact the information could be supplied only by the Public Information Officer of the affiliated Colleges and, therefore, by letter dated 11/03/2010 the application was transferred to the Public Information Officer of the affiliated colleges. That section 6 permits transfer to the relevant authority where the information requested is held by another authority or the subject matter is more closely connected with the function of another public authority. That the Complainant was accordingly

informed. That no information is declined to the Complainant and hence complaint under section 18 of the Right to Information Act, 2005 is not maintainable. That the provisions of section 18 are not at all attracted. It is the case of the Opponent that there is a delay of 3 days in transferring the application under section 6(3) of the Right to Information Act. That para 5 of the Complaint demonstrates that the Complainant had full knowledge of the names of affiliated colleges. That the list was not furnished to the Complainant as the Complainant is member of teaching faculty and, therefore, would know about the names of affiliated colleges. That no information is denied to the complainant as the application is already transferred to the affiliated colleges. That the grounds urged in the complaint are not available to the complainant and the same are without any merit. According to the Opponent the complaint is liable to be dismissed.

4. Heard the arguments. The Complainant argued in person and the learned Adv. Ms. A. Agni argued on behalf of the Opponent.

The complainant referred to the facts of the case in detail. According to him some affiliated colleges have not been furnished the information. According to the Complainant some colleges have furnished the information. He next submitted that Complaint is maintainable. He also referred to various provisions of Right to Information Act particularly 18(3) and 18(1)(f) and also section 18 and 19. He relied on Judgment of Delhi High Court in Life Insurance Corporation of India v/s the Central Information Commission and others copy of which is on record.

Adv. for Opponent also referred to the facts of the case. According to her Complaint is not maintainable and as such liable to be dismissed. She next submitted that section 18 is not attracted. According to her there is delay of 3 days in sending the application under section 6 (3) and for that Public Information Officer cannot be penalized. Adv. for Opponent referred to section 18 as well as 19 of Right to Information Act. She also referred to the list of affiliated colleges and that initially it was

not furnished as complainant knew the same being a member of the faculty. Adv. for Opponent also referred to section 18 and 19 of Right to Information Act. Regarding query No. 2 she submitted that application was transferred as a whole. Referring to the judgment of Delhi High Court she submitted that the Judgment is not applicable to the facts of this case. According to her whole request was sent as there was no information available with the University.

5. In reply the Complainant submitted that complaint is maintainable. That Public Information Officer did not furnish information to query No. 2. According to him information was available but not furnished. Even the list of colleges not given.

6. 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 is to be granted or not?

It is seen that the Complainant filed an application seeking certain information from the Public Information Officer Registrar, Goa University Taleigao Plateau, Goa. The Information, it appears, pertains to various colleges. It is seen that by letter dated 11/03/2010 the Asstt. Registrar-I/APIO transferred the said application under section 6(3) (ii) of Right to Information Act to all the affiliated colleges of Arts and Science & Commerce. It appears that the entire application was transferred.

According to the Complainant names of colleges were not furnished. According to Adv. for opponent the list was not furnished as the Complainant being in teaching faculty knew about the same and that on 26/03/2010 the list of names of colleges were furnished.

7. It would not be out of place if I refer to section 6 of the Right to Information Act. Section 6 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 officer 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)

(3) Where an application is made to a public authority requesting 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.”

Sub-section (1) of section 6 expressly requires that a person who desires to obtain information under the Act shall make a request along with the prescribed fee to the Public Information Officer of the concerned Public Authority specifying the particulars of the information. Sub-section (3) carves out an exception to the requirement of sub-section (1). As per the same where a public Authority to whom an application is made, finds that information demanded is not with it but is held by some other Authority, it is duty bound to transfer the application for information to the concerned authority under intimation to the applicant/information seeker. In my view sub-section (3) of section 6 cannot be read in isolation, sub-section (1) of section 6 being the main section. The pure objective behind enacting this provision is perhaps to lessen the travails of an information seeker, lest he is lost in the labyrinth of procedural technicalities.

From the above, it is clear that application is to be made to the Public Information Officer of concerned Department.

I have perused some of the rulings of the Central Information Commission as well as State Information Commissions on the point.

(i) In a case (Shri S. C. Agrawal V/s President's Secretariat Appeal Nos. CIC/WB/A/2008/01033 & 1423 dated 05/06/2008 and 29/08/2008 the Commission observed that neither Department of Justice nor PMO can answer such a question of appellant by stating that the original letter stood transferred. Now, therefore, if Appellant Shri Agrawal seeks to know what action those Ministries have taken on the complaint of 21/01/2008, transferred to them by the Rashtrapati Bhawan, such a question must be addressed u/s 6(1) to the CPIO of the concerned public authority. In this case, this has not been done. The appeals being unsustainable were dismissed and directed the appellant to apply to the CPIO, Department of Justice for the purpose.

(ii) In A Gangopadhyaya V/s South East Central Railway, Raipur (Appln. No. CIC/OK/A/2006/00453 dated 02/01/2007) where appellant asked for 20 items of

information each of which related to a different department/activity and the appellant was asked to put in separate applications for each of the items of information, the respondent's reply was upheld by the Commission.

(iii) Veeresh Malik V/s Ministry of Petroleum Natural Gas New Delhi (case No. 261/iC/(A)2006 F Nos CIC/MA/A/2006/00580 dated 11/09/2006) where appellant submitted applications to the Ministry of Petroleum and Natural Gas and expect transfer of the same under section 6(3) to the concerned oil companies, the C.I.C. held it is not understandable why applicant expects to transfer the same to oil Companies when oil Companies themselves are public authorities under the Act.

(iv) In Abid Ulla Khan V/s Northern Railway (case No. 1320/iC/(A) 2007 dated 10/10/2007) it is observed that Appellant was well aware about the availability of information in the office of the CPIO in Lucknow, yet he chose to file his application to the Delhi Office, which has resulted in loss of time. It is further observed that information seeker should apply for information to the CPIO, who may be in possession of the requisite information.

State Information Commissions also have held similar view.

In Gurbaksh Singh v/s Public Information Officer, O/o Director Local bodies Punjab & Another (2008), ID 469 (SIC Punjab) this aspect has been extensively dealt. The relevant observations are in para 7 and 8.

9. The next contention is about maintainability of the complaint. Under section 18(1) of the Right to Information Act the Complaint may be filed if _____

(a) The Complainant is unable to submit an application for information because no public Information Officer has been designated by the Public Authority.

(b) The Public Information Officer or Asst. Public Information Officer refuses to accept the application for information;

(c) the Complainant has been refused Access to any information requested under the act;

- (d) the Complainant does not receive a response from the Public Information officer within the specified time limit;
- (e) the Complainant has been required to pay an amount of fee of which is reasonable;
- (f) the Complainant believe that he has been given incomplete misleading or false information; and
- (g) in respect of any other matter relating requesting or obtaining access to the record under the Act.

Thus the complaint can also be filed in case of Public Information Officer does not respond within the time limit specified under the Act.

No doubt that as per the scheme of the Act an aggrieved party has to file appeal before First Appellate Authority. I have perused some of the rulings of Central Information Commission wherein matters were not entertained advising the parties to prefer Appeal before First Appellate Authority.

10. Coming to the case at hand it is seen that the Application was filed on 2nd March, 2010 the Public Information Officer/Goa University/Opponent. From the application it is clear that the information was not with opponent. By letter dated 11/03/2010 Asstt. Registrar-I/APIO transferred the same to "All the affiliated colleges of Arts, Science & Commerce" and copy was sent to the Complainant however no names of colleges were furnished. It appears that names were furnished subsequently. It is seen that such colleges have not been made as a party before this Commission Even the PIOs who have not provided the information have not been made parties herein. In fact grievance of the Complainant is with such PIOs who have not furnished information. In view of this the issue before this Commission falls in a narrow compass.

I have perused the application dated 02/03/2010 seeking information. Point 2/item No. 2 is to be furnished by the Opponent if information is available with them. However, the reply was not furnished. It appears that the entire application was sent to the concerned colleges.

11. Adv. for the Opponent contends that the Complaint is not maintainable and liable to be dismissed. I do agree with this contention that complaint is not maintainable. However in the instant case I am inclined to grant the relief partly firstly because opponents have already taken steps in the matter and secondly because Right to Information act is people friendly and user friendly Act and to deny information on such grounds is not in true spirit of Right to Information Act. However, this will not be cited as a precedent. This is in factual matrix of this case alone.

12. Regarding penalty I must say that there is some delay in furnishing information in respect of item No. 2/Point N. 2. However the same is to be condoned in the facts of this case and the nature of the application. The Public Information Officer might have genuinely believed and sent the entire application. So also the question of compensation does not arise.

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

ORDER

The Opponent is directed to furnish the information available in respect of point/item No. 2 of the application of the Complainant dated 02/03/2010 within 15 days from the receipt of this order.

The complainant is at liberty to proceed against the Public Information Officers of all such colleges who had not provided information sought by the Complainant.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 21st day of September 2010.

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

