

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.426/SCIC/2010

Shri Sudesh S. Porob,
"Shashi Sadan"
Palma –Pomburpa,
Bardez-Goa.

..... Complainant.

V/s.

The State Public Information Officer &
Executive Engineer,
Works Div. XVIII(Roads-N),
PWD, Ponda-Goa.

..... Opponent/Respondent.

Complainant absent. Adv. Yogesh Naik for the Complainant.

Opponent in person.

ORDER
(09-09-2010)

1. The Complainant, Shri Sudesh S. Porob, has filed this Complaint praying that the Opponent be directed to furnish the information sought by the Complainant free of charge, since, he has failed to provide the same within the specified time period, that the Opponent individually be held under disciplinary action for deliberately obstructing the access to the information as sought by the Complainant and also for deemed refusal of the request; that penalty be imposed in terms of section 20(2) of the Right to Information Act.

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

That the Complainant vide his application dated 02/03/2010 has requested the Public Information Officer/Executive Engineer, Works Division XVIII (Roads), Ponda/Opponent to issue an Information/certified copies under Right to Information Act, 2005 in respect of Miss. Manisha Prabhkar Shet who is holding a post of Technical Assistant in Sub Div.II of Works Division XVIII, (Road-N) . That the said application was acknowledged by the office of the Opponent on 05/03/2010. That

since, the receipt of the above said application by the Opponent till today, this Complainant is neither being furnished the information/documents sought by him nor being informed of the decision taken in the matter which amounts to a deemed refusal of the request of this Complainant. Being aggrieved, the Complainant has filed the present Complaint on the ground 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 Complainant vide his application dated 02/03/2010 has requested certain information under Right to Information Act. That the Complainant has approached the First Appellate Authority regarding the present matter and the First Appellate Authority by order dated 07/06/2010 has dismissed the appeal on the ground that the Complainant did not pay the necessary processing fee as required under Right to Information Act. It is the case of the Opponent that the Complainant had not accompanied the necessary processing fee of Rs.10/- as required under Right to Information Act. That the complainant had agreed to make a separate application alongwith the necessary processing fee for obtaining the information before the First Appellate Authority which is also mentioned in the said order. However, instead of applying afresh, the Complainant sought the path of Complaint before this Commission. In short it is the case of the Opponent that information sought by the Complainant cannot be issued since he has not applied by fulfilling the conditions under the RTI Act and hence the Complaint be dismissed.

4. Heard the arguments Shri Rupesh Porobo, the Representative of the Complainant argued on behalf of the Complainant and opponent argued in person. The Representative of the complainant referred to the facts of the case in detail. According to him section 7(8) (1) has not been applied by PIO, and in view of this he wants the application of section 7(6) and also to impose penalty on the opponent.

The Opponent argued that the application was sent but it was not accompanied by processing fee. He referred to the order passed by the First Appellate

Authority. He also submitted that Complainant had agreed before the FAA to file the proper application. He next referred section 6(1) of Right to Information Act according to him the application is liable to be dismissed.

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 is to be granted or not.

It is seen that Complainant filed an application dated 02/03/2010 seeking certain information from the Opponent. It appears that the same was sent by post. It appears that the Opponent received it on 05/03/2010. As per the Complaint the Complainant states that till to-day the Opponent has not furnished the information and on the failure of opponent he has filed the Complaint. The Complainant does not state any other thing in the Complaint.

However from the reply it appears that the application was not accompanied by prescribed fee. It is seen from the First Appellate Authority and by order dated 07/06/2010 the Appeal was dismissed. It becomes clear from the order of First Appellate Authority that since processing fee was not paid the application was not considered. It is pertinent to note from the order of Appellate Authority " The Authorized Representative of the Appellant after seeing that the application was not affixed with the necessary processing fee stamp of Rs. 10/- agreed to make a separate application to the Respondent SPIO for obtaining the necessary information as required by the Appellant."

It is to be noted here that for obtaining information under the Act. the applicant is called upon to pay certain charges or fees depending upon type of volume of information sought. Whenever an applicant/information seeker seeks information under the Act, he is required to pay a prescribed application fee failing which the information would not be supplied. In short a request for obtaining information under section 6(1) is to be accompanied by an application fee of Rs.10/-

6. I have perused some of the rulings of Central Information Commission on the point.

In Dr. K. N. Gehlot V/s West Central Railway Jabalpur (NoCIC/OK/C2006/00119 dated 02/11/2006) it was held that application without fee not maintainable under Right to Information Act. It was also observed that it cannot be held that information was denied by PIO.

In Ms. Gita Dewan Verma V/s Ministry of Urban Development (Complaint No. CIC/WB/C2006/00078 dated 12/05/2006) it was observed "however no fee has been paid for the application nor has the Complainant challenged this decision in her rejoinder. We cannot, therefore, hold the CPIO of the Ministry of Urban Development in violation of Section 7 of the Right to Information Act"

In Ketan Kantilal Modi V/s Directorate General of Central Excise Intelligence, New Delhi (case No. 9/IC/CA/2006 F.No.CIC/MA/A/2006/00033 dated 05/07/2006) where the information seeker did not put up his application for information as per the prescribed procedure for seeking information, the Right to Information Act is not invoked. The Complainant was directed to seek information from the C.P.I.O. as per prescribed procedure and deposit necessary fee.

In short an application without fee is not treated as Right to Information application. It is pertinent to note that rules regarding fees leave little discretion with Public Authority.

Regarding mode of payment we are governed by Goa Right to Information (Regulation of fee and cost) Rules 2006 (Notification No.DI/INF/RTI/BILL/05/6474 dated 15/02/2006 and Notification No.DI/INF/RTI/BILL/05/1129 dated 27/07/2007)

7. As per the order of the Appellate Authority the representative of the Complainant (Appellant in the Appeal) agreed to make a separate application for seeking information. Instead the present Complaint was filed.

8. The Complainant wants penal action to be taken against the Opponent. However in view of all the above Public Information Officer cannot be blamed for not furnishing the information and he cannot be held responsible or liable for any action. Section 7(8) is not attracted in the factual backdrop of this case.

9. In the instant case, Public Information Officer could inform the Complainant to affix the necessary fees, however, this has not been done. May be due to lack of proper appreciation of the provisions of Right to Information Act.

Right to Information Act is a people friendly user friendly Act. Therefore, in future if fee is not paid alongwith the application or paid in a manner not prescribed in the fee rules, the PIO should start processing the application immediately on receipt. The information may actually be provided only on payment of fee.

In any case the following order would meet the ends of Justice. Hence the order:-

ORDER

The Complainant to pay the concerned fee within 5 days from the receipt of the order. Public Information Officer to process the application and furnish the information within 15 days from the receipt of the order. The information be provided only on payment of fee.

The Complaint is disposed off.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 9th day of September, 2010.

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

Complaint No.426/SCIC/2010

Goa State Information Commission,
Shrama Shakti Bhavan, Gr. Floor,
Patto, Plaza, Panaji –Goa.

Dated: 15/09/2010.

To,
Shri Sudesh S. Porob,
"Shashi Sadan"
Palma –Pomburpa,
Bardez-Goa.

The State Public Information Officer &
Executive Engineer,
Works Div. XVIII(Roads-N),
PWD, Ponda-Goa.

Sub: Complaint No.426/SCIC/2010.

Sir,

I am directed to forward herewith copy of the Order dated 09/09/2010 passed by the Commission in the above referred Complaint for your information and necessary action.

Yours faithfully,

(Meena H. Naik Goltekar)
Under Secretary-Cum-Registrar

Encl: copy of Judgment/Order in 5 pages.

