

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

**Complaint No. 71/2009**

Shri Jowett D'Souza,  
H.No. 139, Ambeaxi Senabatim,  
Calva, Salcete –Goa.

... Complainant

V/s

Shri K. D. Singh,  
Inspector General of Police,  
Police Headquarters,  
Panaji –Goa.

... Opponent.

Complainant in person.  
Adv. D. Kinlekar for the Opponent present.

**O R D E R**  
(24-09-2010)

1. The Complainant, Jowett D'Souza, has filed the present Complaint for initiating disciplinary action against the Opponent and that Suitable action deemed fit and proper be initiated.

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

That the Complainant had filed a first appeal before Opponent on 28/08/2009 as per the provisions of Right to Information Act. That the Appeal was registered and posted for hearing on 10/09/2009, however, the Complainant was informed at short notice that the same was postponed to 16/09/2009. That on 16/09/2009 the Complainant visited the office of the Opponent but he was kept waiting and at around 2.00 p.m. P.I. Smt. Ezilda D'Souza informed that I.G.P. is in a meeting and is unable to hear the appeal. Again the matter was postponed to 23/09/2009, by P.I. Ezilda D'Souza. That on 23/09/2009 the Complainant once again visited the office of the Opponent. That the hearing of the Appeal was taken and during the course of hearing the opponent said that he is upholding the letter of Public Information officer without giving any opportunity to the Complainant. That the Complainant requested politely to permit him to make oral submissions which the Opponent refused to allow. That the

Complainant tried to put written arguments supported with rulings, however, the Opponent was furious and arrogant against the Complainant and started abusing the Complainant with threats such as "I will teach you to talk properly by arresting you" etc. It is the case of the Complainant that the opponent was furious and aggressive physically and directed P.I petition cell Smt. Ezilda D'Souza to hang him (the Complainant) outside the office and never again allow him to enter the opponents office. That the Complainant left the office and thereafter sent the written arguments by post. That the Opponent had also committed similar Acts against two other applicants/information seekers. Hence the present Complaint.

3. Opponent resists the Complaint and the reply is on record. It is the case of the Opponent that the Complaint is bad, mischievous and filed only to harass the opponent. That this Authority has no Jurisdiction to hear the complaint as section 21 of the Right to Information Act protects action taken in good faith. That there is no provision under Right to Information Act to file such kind of Complaint and section 18 (1) speaks about Complaints and inquiry in respect of denial of information sought. On merits the Opponent admits about filing the Appeal and also about postponing of the hearings including being busy in the meeting and also about hearing and order passed. That the Opponent denies about using bad words, being furious etc as mentioned by the Complainant in the Complaint. It is the case of the Opponent that opponent was sitting as appellate Authority and was very much aware of such kind of situations and hence did not react. It is the case of the Opponent that no written arguments were received. That the Complainant is making baseless allegations against the Public Authority. That the Complainant has filed a false complaint against the Opponent before State Police Complaint Authority, Altinho, Panaji Goa, which was dismissed vide order dated 05/10/2009. That the Complainant is aggressive in nature and has criminal background and a criminal case is pending. It is the case of the Opponent that he acted in good faith in passing the order dated 23/09/2009.

4. Written arguments as well as affidavit of the Complainant are on record.
5. Heard the arguments. The Complainant argued in person and also filed written arguments on record. Adv. Smt. D. Kinleker argued on behalf of the Opponent.

Complainant referred in detail to the facts leading to the present Complaint and was even ready to examine the witness. According to him section 18(1)(f) is attracted. He relied on various orders, which are on record.

Adv. for Opponent submitted that this Authority has no jurisdiction to entertain the Complaint. That the same is not covered under Right to Information Act. She next referred to section 21 and submitted that no action lies if anything is done in good faith. According to the Adv. for the Opponent there is no provisions to file the Complaint under section 18(1)(a) 18(1)(f) etc. According to her this Complaint is not maintainable.

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 not in dispute that appeal was filed by the Complainant and the date for hearing was fixed. Again it is not in dispute that the same was adjourned to 16/09/2010 and the same was further adjourned to 23/08/2010. it is also not in dispute that order was passed on 23/08/2010.

Now this Complaint is filed by the Complainant against Shri K. D. Singh, Inspector General of Police on account of his unbecoming behavior as Appellate Authority under Right to Information Act and for causing threat of arrest etc during the appeal proceedings. Of course this part of threat etc is vehemently denied by Opponent

7. At the outset I must say that First Appellate Authority is a quasi-judicial authority. Assuming that even if law does not mandate a hearing whenever appellant requests for hearing the request has to be considered favourably. The principles of nature justice also require that the party must be given an opportunity of being heard. Considering the subject matter of the Complaint, it reminds me of Wilfred Grenfell who has said "The service we render to others is really the rent we pay for our room on this earth" The scriptures say that everyone is part and parcel of God, and serving anyone implies serving God himself. The greatest men of the Country considered themselves as public servants. Intemperate language unbecoming of decorum is to be avoided. Misbehavior with Applicants/appellants approaching Public Authorities under Right to information Act is not acceptable.

8. No doubt Right to Information Act provides for filing Complainants to the Information Commission. Under section section 18(1) of the Act a 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 or because the Public Information Officer or A.P.I.O. refuses to accept the application for information;
- (b) the complainant has been refused access to any information requested under the Act;
- (c) the Complainant does not receive a response from the Public Information Officer within the specified time limit;
- (d) the Complainant has been required to pay an amount of fee which is unreasonable;
- (e) the Complainant believes that he has been given incomplete, misleading or false information; and
- (f) in respect of any other matter relating to requesting or obtaining access to records under the Act;

...5/-

Section 18 provides for complaints to the Commission from persons who are denied information demands by them under the Act in the circumstances enumerated in clauses (a) to (f) of Sub-section 1 of section 18. A reading of clause (f) shows beyond doubt that for a complaint to fall under this clause, it must relate to requesting or obtaining information. In the case before me the Complaint is on account of unbecoming behavior, abusive threats etc.

I have perused some of the rulings on the points. In state of Gujarat and Anr. v/s Pandya Vipul Kumar Dineshchandra and anr 2009 (1)ID1213(Gujarat High Court) it was observed as under.

“..... the power of Chief Information Commissioner is the creation of the statute and his power is restricted to the provisions of the Act. He has power to direct for supplying of the information, and he may in some cases, if the informations are not correctly supplied proceed to direct for correction of such information and to supply the same. However, his power would end there, and it would not further exceed for adjudication of the rights amongst party on the basis of such information are not available to him. The aforesaid is apparent form the object and provisions of the Act. The only conclusion is that the Chief Information Commissioner has no power to adjudicate rights of the parties based on the information may be for the transfer order passed by the Government Authority or otherwise.....”

In another case the Gujarat High Court observed as under:-

“ Under the Right to Information Act 2005 the Authority has a basic function to be performed either to give the information or to deny to furnish the information. Additional prayers like demolition etc cannot be granted by the Authority under the Act 2005, which take away substantive rights of the party.....To pass an order of demolition is completely out of jurisdiction of chief Information Commissioner. This authority must act within the jurisdiction conferred by the Act 2005”.

9. Section 19 (6) of the Right to Information Act stipulates that First Appellate Authority shall dispose off the appeal filed before him against the orders of Public Information Office within 30 days. This period may be extended upto 45 days for reasons to be recorded in writing. However First Appellate Authority is not covered by the penal provision. There is no provision for imposition of penalty.

The pivotal question that requires determination is whether the Commission can grant the relief prayed. The adjudicatory jurisdiction of the Commission stems from provisions of section 18,19 and 20. These sections come into play only in the event of disposal by a Public Information Officer/Appellate Authority of a specific request for information. Entertaining the Complaint in the form that is sought is not within the purview of the Commission. I feel that in the factual scenario of the instant case invocation of the jurisdiction of the Commission is not justified. The Commission cannot entertain any matter, which is in the nature of criminal complaint or involving criminal offences. The commission can observe only while disposing the appeal and not independent of the same. In my view the Commission does not have the jurisdiction to entertain and adjudicate upon the present Complaint.

However it needs to be stressed that Appellate Authority in general to see that proper language is used and none are hurt. Language is the dress of thought. It is said that politeness and courtesy are more precious than gems; they give satisfaction to man endear him to his Creator and to the public.

10. In para 8 of the reply of the opponent states about complainant losing control, becoming aggressive abusing the Opponent etc. According to complainant it is other way. In any Case this is not the forum to decide the same.

11. I have perused the written arguments on record as well as the other material on record.

The Complainant vehemently contends about the incident and also offered to produce witnesses. However this Commission has limited powers under the Act. The Commission is not a Court of plenary jurisdiction but exercises limited jurisdiction conferred by Right to Information 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.

12. The Complainant may be having a genuine grievance however this Commission has no jurisdiction to entertain such type of Complaint. The Complainant will have to seek proper and adequate relief form the competent forum/Appropriate Authority/Court.

13. In view of the above the petition stands disposed.

Pronounced in the Commission on this 24<sup>th</sup> September, 2010.

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

