

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complainant no. 9/SCTC/2010

Shri Atish P. Mandrekar,
H. No. 549/C, Vodlem –Bhat,
Taleigao, Panaji –Goa.

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Complainant

V/s

1) The First Appellate Authority,
The Director of Accounts,
Dte. Of Accounts, Panaji.

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Opponent No.1

2) The Public Information Officer,
Jt. Director of Accounts,
Dte. Of Accounts, Panaji –Goa.

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Opponent No.2

Complainant in person.

Opponent No. 1 alongwith Adv. N. Narvenker present.

Representative of the Opponent No. 2 present and Adv. H. Naik present.

O R D E R

(19/10/2010)

1. The complainant, Shri Atish P. Mandrekar has filed the present Complaint praying that the Information as required by him complainant be furnished to him correctly and fully without reserving any information to save any person; that penalty be imposed on opponent no.2/P.I.O. as per sec 20 of the Right to Information Act; that Disciplinary action be initiated against P.I.O./Opp. No.2 and F.A.A/Opponent No.1 for not providing the information; that inspection of the files/documents may be given and documents be collected from all deemed P.I.O., that compensation be awarded for harassing the complainant and that no fees be charged as under sec 7(6) of Right to Information Act.

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

That the complainant has filed an application dated 29-10-2009 under sec 6 of the Right to Information Act 2005 (R.T.I.'Act) thereby requesting the Public Information Officer/Joint Director of Accounts, Directorate of Accounts Panaji Goa to furnish the information specified therein on 21 points. That the opponents have knowingly refused access to any information and that the opponent No.1 has not

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given any response to the request for information as per the application. That the opponent failed to provide inspection of the files/documents as per the application dated 29-10-2009. That the complainant preferred First Appeal against deemed refusal by the opponent no.2 before the First Appellate Authority. That the First Appellate Authority failed to hear and decide the First Appeal within 30 days from filing First Appeal and deliberately not provided any Opportunity to the complainant for hearing. That the First Appellate Authority has rejected the Appeal as deemed refusal which is bad in law. That no hearing given and inspection not permitted and as such amounts to deemed refusal. Being aggrieved the Appellant has filed the present complaint on the grounds as set out in the complaint.

3. The opponent resists the complaint and their say is on records.

It is the case of the Opponent No.1 that the application dated 29-10-2009 is a joint application made with payment of single application fee of Rs.10/- only in compliance of rule 3 of the Goa Right to information (Regulation of fee and cost) Rules 2006. That since the said application dated 29/10/2009 being joint application bears court fee of Rs.10/- only therefore the same is not required to be dealt with severally. It is the case of opponent No. 1 that there were in all six co-signatories to the joint application dated 29/10/2009 including the Complainant herein. That the First Appeal was preferred by Shri Kashinath P. Shetye and the complainant and was also representative in nature. That only Shri Shetye was summoned under notice and in pursuance of the Notice the appellant Shri K.Shetye appeared. That on going through the papers submitted during F.A. the opponent No.1 was of the Opinion that it was beyond the reach of public Information Officer to provide the information sought for as per original joint application dated 29/1/2009 within the time limit prescribed vide section 7(1) of the RTI Act. That the request could not be entertained due to genuine reasons and there was no malafides on the part of Public Information officer in not furnishing such information within prescribed time limit. That the First Appeal was disposed off by order dated 11/01/2010. That

Opponent No. 2 complied with such direction contained in the said order. That the act on the part of Opponent No. 1 to direct the appellant Shri K. Shetye to remain present is proper since original application was filed jointly by 1 and 5 others on payment of fee for information of Rs. 10/- and not severally paying corresponding fee. It is the case of the Opponent No. 1 that Complainant being a co-signatory to the joint application dated 29/10/2009 as well as First Appeal dated 16/12/2009 should be deemed to be recipient of the information furnished to the appellant Shri K. Shetye and the Appellant No. 2, the Complainant herein and other applicants in the original joint application dated 29/10/2009 should be deemed to be recipients of the information supplied by the Public Information officer/Opponent No. 2. That in case it is not held so mischievous elements may make a joint application in the names of 101 or any such large number of applicants and go on making peace meal appeal and claim for individual reply for submission of same set of documents which would be a case of misuse of provisions of law. According to opponent No. 1 Complaint be dismissed.

4. It is the case of opponent No.2 that Application under Right to Information Act is signed by 6 people, that First Appeal preferred by two applicants and the present Complaint is filed by one applicant. That application was filed to furnish the information on 13 points/questions and not on 21 points. That the information sought could not be furnished within the stipulated period as the information sought was voluminous in nature. That there was no deemed refusal. That this opponent denies that opponent No. 1 failed to hear and decide First appeal within 30 days and deliberately not provided any opportunity to the Complainant for hearing. It is the case of Opponent No. 2 that Opponent No.1 heard the complainant as well as Public Information Officer and only thereafter passed the order. It is the case of opponent No.2 that the grounds mentioned are false and vexatious, and that complaint is liable to be dismissed.

5. Heard the arguments. The Complainant the learned Adv. A. Mandrekar argued in person. The learned Adv. Smt. N. Narvekar argued on behalf of opponent No. 1 and the learned Adv. Smt. Harsha Naik argued on behalf of opponent No. 2. All the advocates advanced elaborate arguments.

Adv. Shri A. Mandreker referred to the facts of the case in detail according to him no notice of Appeal is given. He relied on Crim. Appln. No. 471/2009. That notice was issued to Appellant No.1. In short according to him fair opportunity was not given. He also referred to Appeal No. 79/2008 Manohar Parriker V/s Public Information Officer, Law Secretary. According to him joint application can be made and also association of persons can file an application. He submitted that strict action be taken against Public Information Officer and he be directed to provide the information.

Adv. Smt. N. Narvenker submitted that Right to Information Act does not provide joint application. She referred to section 6 and submitted that it is mentioned as a person. She also referred to the authorities relied by the Complainant. According to her nowhere it is mentioned about joint application/joint complaint under Right to Information Act. According to her Complainant is a deemed recipient of information.

Adv. Smt. H. Naik submitted that the application itself is not maintainable. She also referred to the definition of citizen. According to her application is to be in proper form. She next submitted that Right to Information Act does not contemplate about body of individuals. Referring to the Application she submitted that Application is dated 29/10/2009 and 6 persons applied. First Appeal was filed by two and Complaint by one. According to her information has been furnished to the main complainant main Complainant was heard. She next submitted that there is no question of deemed refusal.

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 one Shri Kashinath T. Shetye, the Complainant herein alongwith five others had filed an application dated 29/10/2009 seeking certain information from the opponent No. 2. It is pertinent to note that it was a joint application. That since information was not furnished within the stipulated time the two of the applicants i.e. Shri Kashinath T. Shetye and the Complainant Adv. Atish Mandreker preferred Appeal before the First Appellate Authority. It is seen that notice was issued to appellant No.1 Shri Kashinath T. Shetye only. By order dated 11/01/2010 the appeal was disposed of. It is seen that Appellant Kashinath Shetye was present at the time of hearing. It is seen that as per the order information could not be furnished in time as the same was voluminous in nature and that the information was furnished free of cost. It is pertinent to note here that Appellant Shri Kashinath Shetye or for that matter any other applicant did not approach the Commission. Only the Complainant herein has filed the present Complaint.

It is now the grievance of the Complainant that the Opponents knowingly refused access to any information.

7. Various contentions have been advanced on both sides. According to the Complainant principles of natural justice has not been followed nor he was even informed about hearing etc. According to the Opponents a group of persons cannot file an application under Right to Information act and that since it was a joint application reply has been furnished only to one person.

The Complainant has relied on the rulings of Supreme Court in Uma Nath Pandey and others v/s State of U.P & Anr. (Crim.Appeal No. 471/2009). The grievance of the Complainant is that he is not informed of the date. Since there were two appellants he ought to have been informed. I do agree with this contention. The First Appellate Authority to bear this in mind in future.

According to opponents a group of persons cannot file an application under Right to Information Act.

The word 'person' is not defined in the Act. In common parlance 'person' denotes a natural person being an individual. General clauses Act gives a wider meaning to the word 'person' and also includes an "association or a body of individuals" the opinion whether group of persons can seek information or not is divided. Majority view is a group/body of individual cannot seek information. However there are also rulings wherein it is held that they can seek information. I do not wish to refer to this aspect herein as information is already furnished.

6. In the case before six persons filed original application. Only two preferred appeal. It was a joint application the two appellants did not join the other four as parties. And only one filed the Complaint. Information is furnished only to the information seeker. If application was joint then if the information is given to one it should be presumed to be given to all. It is to be noted that stamp of Rs. 10/- is affixed. That means it is to be treated as only one application. The rulings relied by the Complainant do not show that every individual is to be furnished separately. Other four applicants have made no grievance. It is to be noted here that Complainant on his own did not intervene before First Appellate Authority. All these show that the application was considered as joint. Whether other applicants were necessary parties etc was not considered. Again I do not wish to advert to the same herein.

The Compliant that is filed also appear to be individual Complaint though documents show as joint complaint. The complainant does not state that they had filed a joint application. In any case I do not wish to enter into all these aspects herein. The Opponents considered it enough to call the one party i.e. First party and furnished information and since it was late gave information free of costs. Therefore the same cannot be termed as malafide and, therefore, the benefit is to be given to the Opponents.

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8. It is to be noted here that if one application by various persons is filed and if the PIO was to furnish information to all of them individually on one application and fees then perhaps it would result in chaos. The aim of RTI is certainly not this that is why it is mentioned as "A person". The purpose behind the Act is to furnish information and the Act should not be stretched too far.

9. Coming to the prayers Prayer(a) can be granted but subject to payment of required fees. Regarding penalty the same cannot be pressed into service in view of the factual matrix of this case. Inspection if any can be taken by the Complainant the other prayer are not attracted.

10. In view of the above, the Complaint is to be dismissed. However Complainant can be provided information subject to payment of fees. The Complainant to deposit the required fees/charges within 10 days from the receipt of order.

The Opponent No.1 to furnish the same only on receipt of fees. Inspection, if any, can be given on a mutually agreed date. The whole process to be completed within 30 days from the receipt of the order. Hence the order:-

O R D E R

With the observation in para 10 the Complaint stands disposed off.

Pronounced in the Commission on this 19th day of October, 2010.

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

