

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 494/SCIC/2010

Public Information Officer,
Ponda Municipal Council,
Ponda -Goa.

...

Complainant

V/s

1. Smt. Nurjahan Bi,
Alishan Mahal
Nagamasjid,
Ponda –Goa.

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Opponent No.1

2. The Director of Municipal Admn.,
Collectorate Bulding,grd. Floor,
Panaji –Goa.

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Opponent No.2.

Complainant absent. Adv. Shri S. Pilgaonker present.

Opponent No. 1 present.

Opponent No. 2 absent His representative H. A. Naronha peresent.

O R D E R
(09/11/2010)

1. The Complainant, Public Information Officer, Ponda Municipal Council, has filed the present complaint praying that the order dated 02/07/2010 passed by Director of Municipal Administration be set aside and the order passed by the Complainant be upheld, as the information sought by the Respondent is barred under section 8(h) of the Right to Information Act; that operation of the impugned order be suspended till the disposal of the appeal.

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

That the Respondent had filed an application dated 07/05/2010 seeking certain information under Right to Information Act ('RTI'Act for short) from the Complainant being the Public Information Officer ('PIO'). That vide reply dated 07/06/2010 the complainant replied the said letter and it was informed to the Respondent that the information sought by the Respondent is covered under the provisions of section 8(h) of the right to information Act and that the application was

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rejected. The Respondent thereafter preferred the Appeal before Director of Municipal Administration against the order of the Complainant. That on the date of hearing the Complainant remained absent and the First Appellate Authority decided the appeal and passed the order directing the complainant to furnish the information sought by the Respondent. Being aggrieved the Complainant has filed the present complaint on the grounds as set out in the complaint.

3. The opponents resist the Complaint and their say is on record. It is the case of opponent No. 1 that the ground urged is that information is barred by section 8(h) of the Right to Information Act. Opponent No. 1 also refers to the suit filed, written statement filed by the Complainant etc. That the Opponent No. 1 learnt from newspaper about criminal case. That in view of civil suit the opponent No. 1 sought the said information. That there is no investigation pending. Even otherwise complainant is bound to give the information.

4. Heard Adv. S. S. Pilgaonker and representative of opponent No.1. The preliminary point that was taken for argument is regarding the maintainability of the Complaint on the ground that the complainant who is the P.I.O cannot approach the Commission by way of complaint. I have heard Adv. Shri Pilgaonker for the Complainant. According to him such a complaint could be filed.

Section 19(1) states "Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7 or is aggrieved by a decision of Central Public information officer or state Public Information officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal....."

Reading of this clearly shows that only the person who is aggrieved by the decision of C.P.I.O or S.P.I.O. has a right to file the appeal before the First Authority. It, therefore, follows that only information seeker alone is authorized to file the appeal under this provision.

Sub-section 3 of section 19 reads as under:-

" A second Appeal against the decision under sub-section (1) shall be within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commissioner:-

This provision does not clearly specify as to whether the applicant/information seeker is alone entitled to make second appeal before the Commission.

In fact in some cases the Central Information Commission has held that appeal by C.P.I.O. against order of A.A. is not maintainable.

In under Secretary(Revenue)PIO V/s Shri V.B. Prabhu Verleker (Appeal No. 7/2006 decided on 27/07/2006 Shri A. Venkatratnam & Shri G.G. Kambli) the appeal was dismissed as not maintainable. In this case second appeal was preferred by PIO/Under Secretary (Revenue).

5. In the instant case a complaint is filed. I would not like to advert to the fact whether complaint is maintainable in the present case. However, the above principle is applicable to the present Complaint. Under section 18(1) of Right to Information Act a Complaint can be filed only if sub-section (a) to (f) are attracted. It uses the word 'any person' and it refers to applicant/information seeker.

In any case this commission is bound by the order referred above of this Commission. In the result the present complaint must fail being not maintainable.

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

ORDER

The Complaint is dismissed being not maintainable.

The complaint is accordingly disposed off.

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

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

