

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Complaint No. 492/SIC/2010

Jowett D'Souza,
H.No. 139, Sernabatim,
Colva, Salcete –Goa.

....

Complainant.

V/s
Goa Police Department,
Through Director General of Police,
PHQ's, Panaji –Goa.

....

Opponent.

Complainant in person.
Opponent absent.
Adv. K. L. Bhagat for the opponent.

O R D E R

(10/01/2011)

1. The Complainant, Shri Jowett D'Souza, has filed the present Complaint praying for a direction to the opponent to comply section 4(a) and 4(b) more specifically mentioned at para 2 of his complaint and to file compliance before this Commission; for initiating necessary action against the opponent for deliberately not implementing the provision of the Act in the opponent department to protect the rampant corruption, as per section 20(1) and 20(2) of the Right to Information Act and for imposing penalty for not complying the statutory provision of the Act.

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

That the Complainant has been working in the State of Goa in promoting/monitoring Right to Information Act 2005('RTI' Act for short) among Goan people to help and educate general public to fight the rampant corruption, misdeeds going in various Government departments/Public Authorities in the State of Goa. That the Opponent is one of the Authority as per the Statutory provisions section 4 of the RTI Act which came into force in the month of October 2005. That in the statutory provisions 4 of the RTI Act 2005 there were certain obligations on the part of the Opponent to be complied within the specific period of 120 days after

...2/-

the Act came into force in the State of Goa which can be clearly defined under section 4(1)(a) and 4(1)(b) . That the Opponent has not complied with the same for the last five years thereby violating the said act i.e. section 4(1)(a) and 4(1)(b) sub section. It is also the case of the Complainant that the opponent as per the act was supposed to hear the First Appeal and that the Opponent has appointed Inspector General of Police (IGP) as First Appellate Authority. That the IGP has been passing one line orders without considering nor mentioning the arguments and the documents produced by the Appellants put before the Appellate Authority. That the present IGP has abused of authority and started passing orders, ex-parte without hearing the Appellant and that even after expiry of stipulated period of 30 days as per section 19(6) of the RTI Act and that without giving reasons for the delay. Since the opponent has not complied with the provisions the complainant has filed the present complaint.

3. The opponent resists the Complaint and the reply of the Opponent is on record. It is the case of the Opponent that the Goa Police Department has complied with the statutory provisions of the RTI Act. That a circular dated 03/07/2007 was received from the Under Secretary (Home) regarding preparation of 17 manuals under RTI Act. That information regarding 17 manuals was furnished. That updating of the same record is continuous process and is in progress. Therefore, the allegations made by the Complainant, as set out in para 2 of the Complaint, are baseless and devoid of any substance. The opponent also denies that the FAA/IGP has violated the provisions of the RTI Act and has passed online orders. The Opponent also referred to the procedure of hearing, the appeal and states that appellant has been given opportunity to be heard in all his appeals except one wherein notice by inadvertence could not be sent to the Appellant. In case the appellant fails to appear before the First Appellate Authority the date of hearing inspite having received notice thereof, it is not mandatory for the FAA to wait for

the appearance of the Appellant and the FAA can dispose off the First Appeal on merit based on the records produced before the FAA, in the absence of the Appellant. The Opponent also relied on the copies of order passed by Inspector General of Police. It is however the case of the opponent that the said order speak in volume that substantial reasoning mentioned in the same. Whenever the appeal is disposed off beyond 30 days the relevant reasons are recorded therein. It is further the case of the Opponent that the Complainant is not entitled for any relief as prayed in the Complaint.

4. Heard the arguments. The Appellant argued in person and Adv. Shri K. L Bhagat argued for the Opponent.

Appellant submitted that there is no authority to file the reply and that reply cannot be looked into. He next submitted that till date section 4 is not complied with. He also referred to the letter dated 06/07/2007 annexure -1. He also referred to annexure -2 as well as order copy of which is on record. The Complainant also filed written arguments which are on record.

During the course of his arguments Adv. Shri Bhagat submitted that opponent are maintaining 17 manuals. According to Adv. for the Opponent section 4 is duly complied with and that nothing remains in the complaint.

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?

At the outset I must say that Public Authority plays a pivotal role in the implementation of the RTI Act both in letter and in spirit. The purpose of the RTI Act is not merely to provide information to the information seeker on demand but to create conditions whereby the citizen would have minimum occasion to request for

information. This type of situation is not impossible but can be created by a proactive disclosure of information by public Authority. As per the scheme of the RTI Act public Authorities have been cast upon with the responsibility to suo motu disseminate as much information about themselves as possible in a way by which public can have easy access to it. Of course it is not a one time exercise but should be done at regular interval and the information to be disseminated has to be upgraded. If what the framers of the Act envisaged is to be a reality by the enforcement of the Act it is imperative that the data is properly stored. The Act casts an responsibility on the public Authority of ensuring, streamlining of records and their maintenance.

Section 4 of the RTI Act entrusts certain obligations on the public Authority. As per the same every public authority is required to maintain all its records.

The records prima facie are evidence of the matters and information recorded. Therefore, the duty is specific to maintain the records duly catalogued and indexed in a manner and the form which facilitates the right to Information under this Act; ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources; and computerized and connected through a network all over the country on different systems' so that access to such records is facilitated. In short the right to information cannot be protected unless the records are properly maintained by public authority. It is mandatory that every public authority to publish within 120 days from the enactment of the Act the details of office, organization duties etc as mentioned in section 4 of the Act.

6. The Complainant contends that opponent has not complied with section 4 of the RTI Act. According to Adv. K. L. Bhagat section 4 is complied with. He also submitted about 17 manuals. If section 4 is complied then it is a good sign.

Provisions of section 4 aims to make automatic disclosure of maximum information to the public. The object of this provision i.e. section 4 is to make the most of the information available by a public authority at the doorsteps of the citizens. In fact it is a mandate of law and to be done by the Public Authorities concerned.

I have perused some of the ruling s of the Central information Commission. Where in the Public authority was directed to disseminate the information in compliance with section 4(1) through public domain so that information seekers have access to information without asking for it.

In any case Public authorities are duty bound to make compliance with the provisions of section 4 without any delay. It is to be noted here that the mechanism of suo-motu disclosure is such that maximization of section 4 would result minimization of recourse to section 6(1) of the RTI Act thereby saving time energy resources of Public Authority.

7. In view of the statement of the Adv. for the opponent Shri Bhagat that opponent has complied I need not delve further in the matter.

8. Chief Secretary on his part to see that Opponents comply the said section 4(1) (a) and (b) in true letter and spirit.

9. Another grievance of the Appellant is regarding the First Appellate Authority.

Even assuming that law does not mandate granting of hearing before FAA yet principles of natural justice require that a fair opportunity is to be given to the parties. It is said that justice is not only to be done but felt to be done. Secondly Appellate Authority should pass speaking orders on the appeals before FAA and give reasons why the appeal is rejected or allowed.

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

ORDER

The Complaint is partly allowed. Prayer (1) is granted. The opponent to comply the provisions of section 4(1)(a) and (b) within two months and report compliance on 04/04/2011 at 10.30 am.

Pronounced in the Commission on this 10th day of January, 2011.

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

