

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 520/SIC/2010

Shri Savio J. F. Correia,
SS-1, Newton Apartments-II,
Mangor Hill,
Vasco-da-Gama-Goa ... Complainant.

V/s

- 1) Public Information Officer,
Additional Director (Vigilance),
Directorate of Vigilance, Serra Bldg.,
Near All India Radio, Altinho,
Panaji -Goa ... Opponent No. 1.
- 2) First Appellate Authority,
Secretary (Vigilance),
Government of Goa,
Secretariat,
Porvorim - Goa ... Opponent No. 2.

Complainant in person.

Opponent absent.

Adv. Smt. Harsha Naik for Opponent No. 1.

Shri Arun L. Dessai, the then PIO present.

O R D E R
(04.03.2011)

1. The Complainant, Shri Savio J. F. Correia, has filed the present Complaint praying for direction to the Public Information Officer/Opponent No. 1 to comply with the Order passed by First Appellate Authority/Opponent No. 2 dated 07.05.2010 and to furnish the information to the Complainant immediately; for imposition of penalty under section 20(1) of the RTI Act on the Public Information Officer; for recommendation of disciplinary action against the PIO/Opponent No. 1 under applicable service rules and for costs.

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

That the Complainant submitted written request dated 19.02.2010 seeking certain information under Right to Information Act, 2005 ('RTI Act' for short) from the Opponent No. 1. That the Complainant did not receive any response from the PIO within the thirty days period from the date of filing of the application, which expired

on 18.03.2009. That the Appellant received communication from the Public Information Officer/Opponent No. 1 dated 05.04.2010 informing that the said application was being processed and no sooner the information is ready it would be furnished. However, the Appellant did not receive the requested information even after lapse of another ten days. Being not satisfied the Appellant preferred Appeal before the First Appellate Authority i.e. Opponent No. 2 on 16.04.2010. By Order dated 07.05.2010 the First Appellate Authority disposed off the Appeal by directing the PIO/Opponent No. 1 to furnish the information free of cost latest by 14.05.2010. It is the case of the Complainant that the PIO/Opponent No. 1 deliberately and malafidely neglected to furnish the information to the Complainant inspite of the express directions from the Appellate Authority. That after receipt of the said Order dated 07.05.2010 and in total violation of all norms the PIO issued a communication addressed to the Complainant dated 12.05.2010 rejecting the Complainant's application dated 19.02.2010 in pursuance of the provisions of section 18(1) (e) and (j) of RTI Act. That the Complainant then issued a communication dated 01.06.2010 to the Opponent No. 2 who also happens to be a Director, Directorate of Vigilance bringing to his notice the insubordination and disobedience of lawful orders and also calling upon him to direct the said PIO to comply with the Order. Since the Opponent failed to comply the Order the Complainant has preferred the present Complaint on various grounds as set out in the Complaint.

3. The Opponent rejects the Complaint and the reply of Opponent No. 1 is on record. It is the case of Opponent No. 1 that the Opponent received the application seeking certain information. The Opponent No. 1 denies that Complainant did not receive any response from the PIO within thirty days period from the date of filing the application, which expired on 18.03.2009. The Opponent also denies the various grounds set out in the Complaint being false and misleading. It is further the case of Opponent No. 1 that Shri Arun L. Dessai the then PIO has been transferred as Director of Transport w.e.f. July 2010 and thereafter Shri S. P.

Masurkar is the PIO. That the Opponent No. 1 was not the PIO when the RTI application was filed by the Complainant. According to Opponent No. 1 if at all there is any delay it is on the part of the then PIO. It is further the case of Opponent No. 1 that Opponent No. 1 is ready to cooperate with the Complainant and furnish the information, if available in the office.

4. Heard the arguments. The Complainant argued in person. Adv. Smt. Harsha Naik argued on behalf of Opponent No. 1 and the then PIO Shri Arun L. Dessai also advanced arguments.

The Complainant referred to the facts of the case in detail. According to him in spite of the Order passed by First Appellate Authority no information is furnished. He next submitted that there is a gross delay in furnishing information. Adv. Smt. Harsha Naik submitted that Opponent No. 1 was not the PIO at the relevant time and if at all there is delay Opponent No. 1 is not responsible. Shri A. L. Dessai, the then PIO referred to the facts of the case in detail. According to him application was received however files were not traceable and as such first reply was sent. He also referred to the Order of Appellate Authority. Shri Dessai submitted that the information sought cannot be furnished. However, he regretted for delay for disposing the application. He next submitted that immediately after receiving the Order of the superior authority he submitted explanation to the Appellate Authority giving reasons as to why the said letter was sent and he quoted decisions therein. According to him there is no disobedience of the Order.

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 is to be granted or not?

It is seen that by Application dated 19.02.2010 the Complainant sought certain information from the Opponent No. 1. The information consisted of 5 items i.e. Sr. No. 1 to 5 and pertained to "list of Public Servants of Doubtful Integrity",

'Agreed List of Suspect Officer', 'list of Points or places for corruption', 'list of unscrupulous contractors, suppliers and Firms' and "list of unscrupulous contactmen". By reply dated 05.04.2010 the Opponent No. 1, i.e. the then PIO Shri Arun L. Dessai, informed the Complainant that the said application is being processed and no sooner the information asked by him is ready the same would be furnished to him. Being not satisfied the Complainant preferred the Appeal before the First Appellate Authority/Opponent No. 2. By order dated 07.05.2010 the Opponent No. 2 directed the PIO to furnish the requisite information free of cost latest by 14.05.2010. It is seen that by letter dated 12.05.2010 the PIO informed the Complainant that the application was rejected in view of provisions of section 8(1) (e) and (j) of RTI Act, 2005.

6. It is to be noted here that section 3 of the RTI Act lays down as under:

"Subject to the provisions of this Act, all citizens shall have the right to information."

That means every person who is a citizen can apply for information. The purpose of RTI Act is to harmonize the conflicting interests while preserving the paramountcy of the democratic ideals and to provide for furnishing certain informations to citizens who desire to have it. Ordinarily all information should be given to the citizen but there are certain informations which have been protected from disclosure. The RTI Act exempts from disclosure of certain information and contents. Section 8 speaks of exemption of disclosure of information. Section 8 (1) starts with non-obstant clause "Notwithstanding anything contained in this Act". This itself shows that section 8 is an exception to the general principles contained in the Act. I have also perused section 8(1) (e) and 8(1) (j). In short, if information falls under these categories the same is exempted from disclosure.

7. In the case at hand the FAA/Opponent No. 2 has ordered and/or directed PIO to furnish information. This order has not been challenged, therefore, the same

stands. In reply to the order of FAA the Opponent No. 1 by letter dated 12.05.2010 informed the Complainant that information cannot be furnished in view of the provisions of section 8(1) (e) and 8(1) (j). PIO ought to have said so when the information was sought, however, at the relevant time he informed that the request is under process. Had he said so FAA perhaps would have addressed to the same. To my mind the said defence, though may be true, is bit late. Again, order of FAA is not challenged. Therefore, this Commission has no alternative but to direct to comply the same.

8. It was contended by the Appellant that there is delay. The request for information is dated 19.02.2010. First reply is dated 05.04.2010. The order of FAA is dated 07.05.2010. The other letter is dated 12.05.2010. Apparently there is some delay. However, the PIO should be given an opportunity to explain the same. Adv. Smt. H. Naik contends that present PIO is not at all responsible for the delay. In any case the then PIO Shri Arun L. Dessai is also to be heard on this aspect.

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

ORDER

The Complaint is allowed. The Opponent No. 1 is hereby directed to comply with the order passed by the First Appellate Authority/Opponent No. 2 dated 07.05.2010 in case No. Secy (Vig)/Appeal/S.Correia/2010 and furnish the information to the Complainant within twenty days from the receipt of the Order and report compliance.

Issue notice under section 20(1) of the R.T.I. Act to the PIO/Opponent No. 1 and the then PIO Shri Arun L. Dessai to show cause why penalty action should not be taken against them for causing delay in furnishing information. The explanation, if any, should reach the Commission on or before 18.04.2011. Public Information Officer/Opponent No. 1 and the then PIO Shri Arun L. Dessai shall appear for hearing.

Further enquiry posted on 18.04.2011 at 10:30a.m.

Complaint is accordingly, disposed off.

Pronounced in the Commission on this 04th day of March, 2011.

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

