

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 621/SCIC/2010

Adv. Aires Rodrigues,
T1-B30, Ribandar Retreat,
Ribandar – Goa

... Complainant.

V/s

Mr. Subodh Katak,
Advocate General of Goa,
High Court Building,
Panaji – Goa

... Opponent.

Complainant in person.
Adv. M. Sonak for Opponent.

O R D E R

(17.03.2011)

1. The Complainant, Adv. Aires Rodrigues, has filed the present complaint praying that the Commission be pleased to inquire into Complainant's complaint of failure by Opponent to comply with the provisions of the Right to Information Act as was required and also for penalty.

2. The case of the Complainant is fully set out in the Complaint. In short, it is his case that Respondent/Opponent is a Public Authority as defined in section 2(h) of the Right to Information Act, 2005. That the office of the Opponent is a constitutional post (i.e. an authority established or constituted by the Constitution of India) and directly falls within the expression "Public Authority" under said section. That R.T.I. Act became law on 15.06.2005 and under section 5 of the Act the Opponent as a Public Authority was required to designate within 100 days Public Information Officers to provide information under the Act to persons requesting the same from his office. It is the case of the complainant that section 4 of the said Act also required the Opponent to publish and make public within one hundred and twenty days various information details pertaining to the office of Opponent. That vide notice dated 28.12.2010, the Complainant protested to the Respondent/Opponent against his failure to comply with the provisions of the Act

failing which he would file a Complaint to this Commission. That the Complainant has not received any reply to the said notice within the time fixed therein or even till date. That the failure to comply with the provisions of the Act by the Opponent is unreasonable, malafide and without reasonable cause. Hence the present Complaint.

3. The case of the Opponent is fully set out in the reply which is on record. It is the case of the Opponent that the Complaint is not maintainable as the same is filed against an individual. That 'Subodh Kantak' is not and cannot be considered as a Public Authority as defined under R.T.I. Act and on this ground alone, the complaint is liable to be dismissed. That there is no averment in the Complaint that the Complainant is unable to submit any request. Since no Public Information Officer has been appointed and in the absence of such an averment the Complaint is not maintainable and liable to be dismissed. That the Complainant has obtained all the information concerning the Advocate General and/or his office from the Public Information Officers designated by the Government. On merits it is the case of the Opponent that the appointment of Adv. General for the State is governed by Article 165 of the Constitution of India. That this provision specifically provides that the duty of Adv. General is to give advice to the Government of the State upon such legal matters as may be referred to him and to perform such other duties of a legal character as may be from time to time assigned to him by the Governor. That the duty of the Advocate General is to discharge functions conferred on him by or under the Constitution or any other law for the time being in force. That the Advocate General is an appointment made under the Constitution. It is further the case of the Opponent that the Advocate General is not a 'Public Authority' as defined under clause (h) of section 2 of the R.T.I. Act and this is also clear from a reading of section 4 and 5 of the Act. That the Staff in the office of the Advocate General is appointed by the General Administration Department (GAD) and all particulars of the Staff are with GAD. That similarly all particulars as to the fees and payment of fees is under the Law Department, which also handles the appointments of Government

Advocates in the High Court. That the duty of the Advocate General being to render advice to the Government, the files seeking such advice are returned to the respective Departments and there is no custody of any file in the office of the Advocate General. That there are no administrative units or offices under the Advocate General. Matters regarding staff are looked after by the G.A.D. Regarding fees the same are looked after by Law Department. That the Government has already appointed P.I.Os in G.A.D and the Law Department. That the Complainant has sought various information from the GAD and the Law Department in respect of various information from the GAD and Law Department in respect of various details about Advocate General and/or office and Staff of Advocate General as well as details about the Government Advocates appointed and who are attached to the Office of the Advocate General. It is also the case of the Opponent that the Complaint has been filed to cause harassment to the Opponent since Opponent has filed a defamation case against the Complainant.

4. Heard the arguments. The learned Adv. Shri. A. Rodrigues/Complainant argued in person and Adv. Shri M. Sonak argued on behalf of the Opponent. Both sides advanced elaborate arguments.

Complainant referred to the facts of the case in detail. According to him Complaint is against Opponent Public Authority as defined under section 2(h). That it is a constitutional post and directly fall in the definition of Public Authority. He referred to section 5 and also section 4 of the R.T.I. Act. According to him these sections have not been complied for five years. He also referred to the reply of the Opponent and particularly para 5, 8 and 9. According to him petition is not in person and that Advocate General is a Constitutional Authority and that he has not intentionally appointed any P.I.O. According to him Opponent be penalized.

During the course of his arguments the learned Adv. Shri Sonak submitted that Complaint is by name and as such not maintainable. He referred to section 18 and submitted that Complaint is not maintainable. That no case is made out and no inability pleaded. He also produced various applications filed by the Complainant

and information furnished. According to him Complaint as a whole is not maintainable. He next referred to section 2(h). He referred to various provisions of the Constitution that is Article 165, 163, 168, 214, 315, 323, etc. and also Article 148 and others. According to him there is distinction made by Constitution and that the post of Advocate General is not a Public Authority. He also referred to section 5 of the R.T.I. Act. According to him person manning the office is not Public Authority. He submitted that S. Kantak in person has been made party and as such no Complaint is maintainable. Secondly, there is no averment that Complainant was unable to obtain information. Thirdly, information has been furnished and fourthly, Advocate General is not a Public Authority. He also submitted that there is no breach of section 5. According to him individual cannot be Public Authority. The Staff of Advocate General's office is appointed by GAD. He also referred to Article 165 of the Constitution of India. According to him Complaint is liable to be dismissed.

In reply, Complainant submitted that Complaint is not in person. He also submitted about Staff chosen. According to him it is a constitutional post with cabinet status.

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 relief prayed is to be granted or not?

At the outset, I must say that right to know is a basic right of citizens of a free country. Long back Aristotle observed that people desired to know. Without adequate information a person cannot form an informed opinion. The Right to Information Act, 2005, has been enacted to provide for a legal right to information under the control of Public Authorities, in order to promote transparency and accountability in the working of every Public Authority. The citizens and information seekers have, subject to few exemption, an overriding right to be given information on matters in possession of State and Public Agencies that are covered by the Act.

As per the scheme of the Act every Public Authority should provide as much information suo motu to the public through various means of communications. In fact, section 4 of the Act makes it obligatory for every public authority to make suo motu disclosures. Section 4(1) (b) of the Act in particular, requires every Public Authority to public sixteen categories of information as mentioned in the said section. The implementation of section 4(1) of the R.T.I. Act is in fact the mandate of law and it is to be done by all the Public Authorities concerned. This would serve a dual purpose. Firstly, maximization of disclosures under section 4(1) (b) would result in minimization of applications under section 6(1) of R.T.I. Act and thereby save time, energy and resources of Public Authorities as well as information seekers. Secondly, most of the information would be available at one place.

6. Section 5 deals with Public Information Officer/P.I.O. P.I.Os are officers designated by the Public Authorities in all the offices or administrative units under it to provide information to the citizens requesting for it under the Act. P.I.O. is the interface between the Public Authority to which he belongs and the citizen seeking information. Section 5 of R.T.I. Act deals with designation of P.I.Os. As per section 5(1) P.I.Os are:-

- (i) designated by Public Authority,
- (ii) the same ought to have been within 100 days.
- (iii) there must be a P.I.O. in every administrative unit/office and,
- (iv) the number of P.I.Os is to the discretion of the Public Authority.

7. Coming to the case at hand, the Opponent is Advocate General of the State of Goa. Article 165 of the Constitution runs as under:-

“Article 165. Advocate General for the State. -- (1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be

referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine."

A bare reading of the above provision will show about Governor's power to appoint Advocate General. By the nature of his work, it is clear that his office is public office. According to Advocate for Opponent, Opponent is not a 'Public Authority'. Of course this is disputed by Complainant.

It is seen from the documents on record that Complainant has sought information regarding Advocate General from the year 2009, 2010 and 2011 and the information has been furnished by G.A.D. as well as Law Department. Therefore it is clear that information has been furnished and the Complainant had no grievance on that count.

8. Advocate for the Opponent contends that duty of the Advocate General is to give advice to the Government of the State and perform duties of legal character. He also contends that the Staff in the office of the Advocate General is appointed by G.A.D and all particulars are with G.A.D and regarding fees, etc. is under Law Department which also handles the appointments of Government Advocates in the High Court and that files seeking advice are sent back to concerned Department. That there are no administrative units or offices under the Advocate General. He also submitted that Government has appointed P.I.Os in the G.A.D and Law Department.

It is seen from record, and as observed above, information has been furnished to the Complainant by P.I.O of G.A.D and P.I.O of Law Department. Whatever information was asked has been furnished.

It is also a fact that appointments are made by G.A.D., appointment regarding Government Advocates, etc are made by Law Department. Payment, etc

are made by concerned Departments. Again files are sent back to the concerned Department. Under these circumstances, P.I.O. based at the Secretariat would be in a better position to furnish the information and that too in time.

9. There is no Complaint that information is not furnished. There is no Complaint about delay also. In any case if information seekers feel that there is any delay, etc. or for any other reason information is not easily available, in my view Chief Secretary is to be requested to see the feasibility and appoint, at the Secretariat only, a P.I.O. who will look exclusively to the information touching the office of Advocate General of the State of Goa, so that general public may not have any problem or difficulty in approaching for seeking information.

10. It is to be noted that R.T.I. 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 R.T.I. 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 onetime exercise but should be done at regular interval and the information to be disseminated has to be upgraded. The Act casts a responsibility on the Public Authority of ensuring, streamlining of records and their maintenance.

Again, since a reasonable time has now passed from the time of promulgation of the R.T.I. Act 2005, Chief Secretary also to see that urgent steps are taken to comply section 4(1) (a) and (b) of the R.T.I. Act and records are converted to electronic form/website, and duly catalogued and indexed so that system is put in proper place. By doing so, the people will have access to the same and automatically reduce applications under section 6(1).

11. Advocate for the Opponent contends that office of Advocate General is not a 'Public Authority'. I need not refer to this aspect herein as it is seen from the

documents produced by Advocate for the Opponent various information have been furnished and it was never refused on this count.

12. It was also contended that the Complaint is not maintainable. Firstly, it is against a person. It is seen that in the Complaint, name as well as designation is mentioned. According to the Complainant the Complaint is not against a person.

Again, Complaint is maintainable under section 18(1) (f).

13. In view of all the above, I pass the following Order:

ORDER

The Complaint is allowed and the matter is referred to the Chief Secretary, State of Goa, and the Chief Secretary to see the feasibility and appoint a Public Information Officer at the Secretariat itself to look exclusively to the information touching the office of Advocate General of the State of Goa and the same be done within 45 days from the receipt of this Order.

The Chief Secretary also to see that the provisions of section 4(1) (a) (b) of the R.T.I. Act, 2005 are duly complied with within three months from the receipt of the Order.

A copy of the Order be sent to the Chief Secretary, Government of Goa, Secretariat, Porvorim-Goa.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 17th day of March, 2011.

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