

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 613/SCIC/2010

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

V/s

1) Governor of Goa,
Raj Bhavan, Dona Paula,
Panaji – Goa Opponent No. 1

2) The Special Secretary to
The Governor of Goa,
Raj Bhavan, Dona Paula,
Panaji – Goa ... Opponent No. 2.

Complainant in person.
Adv. C. Ferreira for Opponent No. 1.
Adv. M. Sonak for Opponent No. 2.

O R D E R
(31.03.2011)

1. The Complainant, Adv. Aires Rodrigues, has filed the present Complaint praying that the Commission may be pleased to inquire into the Complainant's complaint of refusal of access to the information sought and pass Orders directing the Respondent to furnish to the Complainant the information sought by him vide letter dated 29.11.2010 and also for imposing penalty attracting section 20 of the RTI Act till information is furnished to the Complainant.

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

That the Complainant, vide his application dated 29.11.2010 sought certain information under Right To Information Act, 2005 ('RTI Act' for short) from the Respondent No. 2/Opponent No.2. By letter dated 30.11.2010 refused access to or supply the information on the ground

that it had been submitted in an affidavit filed before the Hon'ble High Court that Governor is not a "Public Authority" under RTI Act, 2005. That vide notice dated 16.12.2010 the Complainant protested to the Respondent against the refusal pointing out that the Governor directly falls within the expression "Public Authority" under section 2(h) (a) of the Act and that Governor of other States of India have appointed Public Information Officers under the said Act and requested the Respondent No. 1 to furnish the information sought 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 and hence, the Complaint. It is further the case of the Complainant that the Governor of a State is a "Public Authority" as defined in section 2(h) of the RTI Act. That Office of the Governor is a constitutional post that is established or constituted by the Constitution of India and directly falls within the expression "Public Authority" under the said section and that merely because an affidavit is allegedly filed that the Governor is not a "Public Authority" cannot detract from the said defined clause, and the Governor on the very terms thereof clearly is a "Public Authority". That the reasons given in the affidavit filed before Hon'ble High Court is no reason whatsoever and this affidavit was filed supporting writ petition which itself challenged an Order of this Commission wherein no such ground that the Governor is not a "Public Authority" was taken and the defence was that the documents sought were privileged documents and could not be given under section 8 of the Act. That the Commission has directed furnishing of the information sought and it is against this Order that the writ petition was filed. In short, it is the case of the Complainant that Opponent was bound to furnish information sought for by the Complainant.

3. The Respondent No. 2 resists the Complaint. The case of the Respondent/Opponent No. 2 is fully set out in the reply which is on

record. It is the case of Opponent No. 2 that the present Complaint is sheer abuse of process of law in as much as the same does not warrant any action under RTI Act. That there is no scope for attraction of section 20 of RTI Act and that Respondent No. 2 has not malafidely denied the request of information or knowingly given incorrect, incomplete or misleading information or distorted information which was the subject of the request, or obstructed in any manner in furnishing the information. That the reply furnished to the Complainant is clear; that it is not possible for Respondent No. 2 to furnish the information in view of the stand taken before the Hon'ble Bombay High Court at Goa on 04.08.2008 in Writ Petition No. 478/2008, that the Governor is not "Public Authority" as defined under RTI Act. That the Hon'ble High Court was pleased to grant ad interim relief in favour of the Public Information Officer and the First Appellate Authority. That this ad interim relief is since been confirmed by the Hon'ble High Court vide Order dated 22.10.2008. That, thereafter, twenty applications received by the Public Information Officer have been consistently replied in the same manner as has been replied in the instant application of the Complainant. That without prejudice, transfer of application in terms of section 6(3) (ii) of the RTI Act has also been done in certain cases. That if the Complainant was aggrieved, he could have invoked the right to file an appeal and not entitled to file a complaint in the factual matrix of the present case and that the Complaint ought to be dismissed. That on earlier occasion vide letter dated 19.11.2009 the Complainant had sought certain information from this Respondent and by communication dated 19.11.2009 an identical reply was furnished to the Complainant. That the Complainant was fully aware of the stand of this Respondent right from November 2009 and did not wish to file any appeal nor any complaint at that time but has maliciously chosen to file the present Complaint, which, for the reasons set out herein, is not maintainable.

4. The Complainant has filed the rejoinder which is on record.

5. Heard the arguments. The Complainant, Adv. Aires Rodrigues, argued in person. The Ld. Adv. Shri C. Ferreira argued on behalf of Respondent No. 1 and Ld. Adv. Shri M. Sonak argued on behalf of Respondent No. 2.

That Complainant referred to the facts of the case in detail. According to him, Complaint is clear and Opponent declined to furnish the information. The stand taken by Public Information Officer is not correct. He also referred to the RTI Act and he also submitted that Opponent No. 2 furnished information after this affidavit also. He next submitted that if at all the stay is granted, it is in that particular matter. According to him this is a delaying tactic. He next submitted that Opponent No. 2 has been appointed as Public Information Officer and there is also First Appellate Authority duly notified by Government of Goa. He next referred to the reply filed by Respondent No. 2 and, particularly, para 4 of the reply. He also referred to para 6. He next submitted that the whole stand before the Hon'ble High Court was in respect of that particular case. That Governor was not a "Public Authority", this stand was not taken before the Commission. He next submitted that action under section 20 be taken. According to him, there should be maximum fine. He lastly submitted that only Opponents claim that they are not "Public Authority" and in other parts, the concerned Governor's Secretariat is furnishing the information.

Adv. Shri Ferreira referred to section 18 and various clauses of the same. He also submitted that this Court has no jurisdiction to entertain the present Complaint against the Governor. He referred to Rameshwar Prasad's case. He also referred to AIR 1974 Supreme Court 2192 and AIR 1995 Supreme Court. Adv. Shri Sonak for Respondent No. 2 submitted that no Complaint is maintainable and that this Commission cannot

entertain the Complaint and referred to various decisions. He next submitted that it would not be a good precedent. He next referred to the issue whether the Governor is a "Public Authority" or not and this issue is pending adjudication before the Hon'ble High Court in Writ Petition No. 478/2008. According to him, Petition is admitted and interim relief granted. According to him, judicial propriety would require that hearing in this Complaint is deferred until Writ Petition No. 478/2008 is decided one way or the other. He also referred to Appeal No. 74/2008, 75/2008, 77/2008 and 78/2008 on the precise grounds of pendency of Writ Petition No. 478/2008. According to Advocate for Opponent No. 2, if not judicial propriety, judicial equality would require that this Complaint is not treated differently as compared to the aforesaid Information Appeals and the hearing proceeded with. Advocate for Opponent No. 2 next submitted that there is difference between Public Authority and Competent Authority. According to him this is a serious issue to be considered. He also enquired about what is difference between those four cases and this case. He next referred to section 15 of RTI Act and also sub-section (1) and (2). According to him, under section 18, only multi member Commission is competent to entertain Complaints. According to him any adjudication by the State Chief Information Commissioner alone could be clearly without jurisdiction and ultra vires under section 18, which contemplates adjudication by the State Information Commission and not the State Chief Information Commissioner. He relied on AIR 2010 Uttarakhand 114 and also on 1991 (3) SCC 567 and 1995 (4) SCC 611 i.e. SS Dhanoa and T. N. Seshan case. The Xerox copies of the Judgments are on record. In short, Advocate for Opponent No. 2 attacked entertaining complaint by this Commission on all fours. He also filed synopsis of the arguments which are on record.

6. In reply, the Complainant submitted about section 15. According to him, there is no bar to entertain the Complaint, more so, in view of stand of the Raj Bhavan. According to him, Governor of Goa cannot say the he is not a Public Authority.

7. I have carefully gone through the records of the case, considered the arguments advanced by the parties and also considered the rulings on which Advocates for Opponents placed reliance. The point that arises for my consideration is whether the relief prayed is to be granted or not?

8. At the outset, I must say that the RTI Act, 2005 has been enacted to provide for the legal right to information to citizens to secure access to information under the control of Public Authorities in order to promote transparency and accountability in the working of every Public Authority. The Preamble to the Act states that this Act was enacted to provide for setting out the practical regime of RTI for citizens to secure access to information under the control of Public Authority in order to promote transparency and accountability. From the scheme of the Act it is clear that RTI Act ensures maximum disclosure and minimum exemption consistent with constitutional provisions prescribing at the same time confidentiality of sensitive information. Ordinarily, all information should be given to the citizens but there are certain information protected from disclosure. Section 8 is an exception to the general principles contained in the Act. This provision exempts disclosure of information or apprehension or prosecution of offenders.

9. It is seen that by application dated 29.11.2010 the Complainant sought certain information from the Secretary to Governor. By reply dated 30.11.2010 the Secretary to the Governor informed the Complainant that an affidavit has been submitted by this Office before the

Hon'ble High Court, Bombay at Panaji. That His Excellency the Governor is not "Public Authority" under the Right to Information Act, 2005. It was also informed that pending the decision of the Hon'ble High Court, in this matter, it is not possible for this Office to respond to his request. That on 16.12.2010 the Complainant wrote to His Excellency, Governor of Goa. It appears that request was not considered.

10. The admitted position is that there is Public Information Officer and First Appellate Authority. It is seen that information has been furnished. In fact, there is a matter before this Commission in which matter the Opponent No. 2 as Public Information Officer has furnished the reply. I have also perused Appeal No. 10 of 2008 (Manohar Parrikar v/s. Public Information Officer and First Appellate Authority) in which information was furnished. The case of the Opponent No. 2 is that an affidavit has been submitted before the Hon'ble High Court of Bombay at Panaji that His Excellency, the Governor is not "Public Authority" under the R.T.I. Act and pending decision of the Hon'ble High Court, in this matter, it is not possible to respond to the Complainant's request.

It is seen that Order in Appeal No. 10 of 2008 was challenged by Writ Petition No. 478 of 2008. Interim relief in terms of prayer clause B was granted on 05.08.2008 and the same was confirmed on 22.10.2008.

According to Advocate for Opponent No. 2 the issue whether "His Excellency, Governor" is Public Authority or not is pending adjudication before the Hon'ble High court in Writ Petition No. 478/2008, interim relief granted and judicial propriety would required that hearing of this Complaint is deferred until the decision of the said Writ Petition. Advocate for Opponent also submitted that Appeals No. 74/2008; 75/2008; 77/2008 and 78/2008 on the precise ground of pendency of the said Writ Petition. According to him present Complaint should not be treated differently.

It is to be noted here that in Appeal No. 10/2008 it was not stand of the Opponent that His Excellency, Governor is not the Public Authority as can be seen from the order passed in the Appeal. Now, the interim relief granted is in the factual scenario of that case and not in 'rem'. Again this order is of 2008 and the said Writ Petition is not yet disposed off as can be seen from the tenor of arguments of the parties. It is nobody's case that blanket stay has been granted.

In **Punjab Public Service Commission v/s. Rajiv Kumar Goyal (C.R. No. 1051 of 2001 date of decision 29.01.2006 Punjab & Haryana High Court)** similar argument/issue was before the Hon'ble High Court.

In that case while admitting the revision petition the Hon'ble Punjab High Court on 23.01.2004 passed an order permitting the plaintiff to move an application for inspection of the record. The Petitioner (Punjab Public Service Commission) moved an application to recall the said order. The said application was dismissed on 31.01.2005. Both the order dated 23.01.2004 and 31.01.2005 were the subject matter of challenge by Punjab Public Service Commission in Special Leave to Appeal (Civil) Nos. 8394 and 8396 of 2005 wherein the Hon'ble Supreme Court has issued notice in the Special Leave Petition and passed an order that the operation of the orders of the High Court permitting inspection shall remain stayed. During the hearing the learned Counsel for the Petitioner has raised twofold objections:- firstly, that the plaintiff moved an application before Civil Court and not to the Information Officer appointed under the Act and, secondly, it was pointed out that since the Hon'ble Supreme Court passed an order in Special Leave Petition on 19.04.2005, the Commission is exempted from disclosing any information in terms of section 8(1) of the Act.

The Hon'ble High Court observed:-

"However I am unable to agree with the arguments raised by the learned Counsel.

The argument that the petitioner is exempt to furnish information in terms of the order passed by the Hon'ble Supreme Court is again not tenable. The order dated 19.04.2005 passed by the Hon'ble Supreme Court reads as under:-

"Taken on board.

Issue notice in the Special Leave Petitions as also on the prayer for grant of interim relief. Until further orders, it is directed that the operation of the Orders of the High Court permitting inspection shall remain stayed".

A perusal of the order passed by the Hon'ble Supreme Court would show that the Hon'ble Supreme Court has stayed the operation of the aforesaid orders of this Court permitting inspection but there is no order of Hon'ble Supreme Court which prohibits the Commission to furnish information under the Act. Consequently, there is no exemption available to the petitioner in terms of section 8(1) (b) of the Act."

In view of the above, I have to agree with the contention of the Complainant that the said order was in that case. Again, with respect, it is not a blanket order. Besides, Public Information Officer/Opponent No. 2 after this order dealt with the Applications.

11. It was contended that this Commission has deferred hearing in Appeal No. 74/2008, 75/2008, 77/2008 and 78/2008 on the ground of

pendency of Writ Petition. According to him judicial equality requires that present Complaint should not be treated differently.

It may be that matters are pending. However, whenever matter came before this Commission (the undersigned), the same have been dealt with. It is seen that on 16.08.2010 one Yeshwant T. Sawant addressed a letter to "The Hon'ble Governor of Goa, Cabo Raj Niwas, Dona Paula, Panaji-Goa." This letter was under R.T.I. By letter dated 17.08.2010 the Public Information Officer, Dr. N. Radhakrishnan transferred under section 6(3) (ii) to Public Information Officer, Water Resources Department. The same Yeshwant T. Sawant addressed another letter to Public Information Officer, Opponent No. 2 herein under R.T.I. Public Information Officer replied by letter dated 31.08.2010. The Public Information Officer informed as under:- "You will please recall that on receipt of your letter dated 16.08.2010 I have already informed you vide letter No. GS/RTI/2010/2087 dated 17.08.2010 that the letter dated 13.04.1999 does not seem to have been received in this office as per our records. Vide the same letter, your letter dated 16.08.2010 has been forwarded to Water Resources Department for necessary action." Incidentally, this case was with this Commission.

Since the cases mentioned were not allotted to this Commission, the same might not have been taken. Even otherwise interim relief was granted on 05.08.2008 and confirmed on 27.10.2008. There is no other reason not to take. Besides, parties also might not have pressed. In any case, matters which are coming before this Commission are being taken.

12. It was next contended that Complaint is not maintainable. This contention is elaborately mentioned in the synopsis of the arguments. In the case before me the Complainant after receiving the reply straightaway

filed a Complaint. According to the Complainant the Complaint is maintainable.

Under section 18(1) Complaint may be filed if sub-section (a) to (f) are attracted. Complaint can be filed in case the Public Information Officer does not reply within the time limit specified under the Act.

In Virandar Kumar Gupta v/s. Delhi Transport Corporation (F. No. CIC/AT/C/2007/00372 dated 22.02.2008) the Hon'ble Central Information Commission observed:-

"Although section 18 of the RTI Act accords to a petitioner the right to approach the Commission directly in a complaint, it would be wholly inappropriate to take up such matters as complaints when the substance of a petition is about the quality and the extent of the information furnished. Such matters are appropriately subject matter of the first appeal under section 19(1) and should be first taken up with the First Appellate Authority before being brought to the Commission either as Second Appeal or as Complaint or both.

The initial few words of section 18 are significant. These read as "subject to the provisions of this Act....." Constructively interpreted, these would imply that section 18 should be invoked provided other provisions of this Act, relevant to the subject of the petition, have been earlier invoked, or, if there are grounds to hold that the petitioner was prevented from invoking those provisions to seek appropriate relief. That is to say, where the avenue of first appeal under section 19(1) is available to a petitioner he should not be encouraged to skip that level and reach the Commission in Complaint under section 18 especially when the relief sought by him could be best provided through the

Appellate process. Section 18 cannot be allowed to be used as a substitute for section 19 of the Act.”

In any case the Complainant to take note of the same in future.

13. Advocate for Opponent No. 2 next contended about section 15, etc. The said contentions are found on page 3, para 6 and page 4, para 7 and 8 and on page 5 para 9 to page 8 and 9 para 11.

In short, this Commission ought not to have entertained the present Complaint. Advocate for Opponent No. 2 relied on:- Mussoorie Dehradun Development Authority *v/s.* Chief Information Commissioner & Others AIR 2010 Uttarakhand 114; (ii) S.S. DHANOA *v/s.* Union of India & Others (1991) 3 SCC 567 and (iii) T. N. Seshan, Chief Election Commissioner of India and 3 other petitions *v/s.* Union of India & 3 Others (1995) 4 SCC 611. I have carefully gone through the said rulings. Air 2010 Uttarakhand 114 is on RTI Act and other two are on Election Commission. There is absolutely no dispute with the proposition laid down. However, in my view single member of the Commission can hear and deliver the Orders of the Commission.

In a case before Central Information Commission i.e. Pyarelal Verma *v/s.* Ministry of Railways in Appeal No. CIC/OK/A/2006/00154 the Appellants challenged the delivery of Judgments of the Chief Information Commissioner by the single member bench of the Commission. Referring to section 12 (4) of the Act and its Preamble Statement of Objects and Reasons, the Chief Information Commissioner ruled that single member bench of the Commission can hear appeals and deliver orders of the Commission. The Chief Information Commissioner observed that there is no provision in the RTI Act requiring that every case that comes before the Commission should be disposed by the Full

Bench comprising of all the Members. This ruling appears to be unchallenged.

Similar view is taken by Hon'ble Patna High Court in Saiyyad Hussain Abbas Rizwi v/s. The State Information Commission & Others. (Letter Patent Appeal No. 102 of 2010 Against the Order dated 27.11.2009 passed by a learned single Judge in C.W. J. C. No. 14486 of 2009).

In para 16 it is observed:-

"16. This takes us on the last issue canvassed on behalf of the Appellant. He submits that in view of the provisions of the Act his appeal ought to have been heard by all the members sitting together. In view of the scheme of the Act, we find it difficult to accede to the submission for the reason that section 15 of the Act is headed "**Constitution of State Information Commission**" and sub-section 4 which provides as follows:-

"15. Constitution of State Information Commission:

Xxx xxx xxx xxx

Xxx xxx xxx xxx

4. The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act."

In other words, the Chief Information Commissioner assisted by the State Information Commissioner, has been vested with the general powers of superintendence. Hon'ble Karnataka High Court also has held similar view.

It is to be noted that if such matters are taken only in full benches it would amount to rendering the whole enactment meaningless negating the Preambular words "for setting out the practical regime of right to information".

If the contention is accepted the very Act would be unworkable in so far as this Commission is concerned. Even otherwise, this issue cannot be agitated here at this stage.

14. It was next contended that in terms of section 2(e), His Excellency, the Governor would be "Competent Authority" in case of other authorities established or constituted by or under the Constitution. It was next contended that an authority cannot be both "Public Authority" and "Competent Authority". According to him, His Excellency, the Governor shall not fall within the purview of section 2(h) which defines "Public Authority".

In fact, as far as this Commission is concerned, the office of the Governor has Public Information Officer as well as First Appellate Authority and in Appeal No. 10/2008 this Commission has already directed to furnish the information. The Writ Petition pending in the Hon'ble High Court is out of this Appeal. In view of this position this argument does not hold before this Commission.

It is to be noted here that under section 2(e) the respective competent authorities are defined, namely, for House of People - Speaker, for Legislative Assembly and Union Territory having Assembly - Speaker;

Legislative Council - Chairman; Supreme Court - Chief Justice of India; and High Court Chief Justice. Similarly, the President or the Governor, as the case may be, shall be competent authority in case of other authorities established or constituted by or under the Constitution. The Administrator appointed under article 239 of the Constitution shall be Competent Authority in respect of the Union Territory of which he/she is appointed by the President.

Under section 28 of the Act "Competent Authority" has been given the power to make rules to carry out the provisions of the Act. It is seen that Chief Justice of India is a Public Authority under R.T.I. So also information from President is available. From the scheme of the Act as well as definitions, the term "Public Authority" is wider than the term "Competent Authority" and thus the term "Public Authority" includes "Competent Authority".

15. According to the Advocate for the Opponent No. 2 the present case be kept in abeyance. Complainant opposes the same. It is to be noted that the said appeal is pending since 2008 till today. Besides, the said interim order is in connection with that case. Therefore, there is no point in keeping the matters in abeyance.

However, in such a situation Public Information Officer can strike a fine balance between the pending petition and the right of the citizen to get information. That means, the same could be given without prejudice to the contentions in the said petition if the Public Information Officer so desires.

16. In view of all the above, I am of the opinion that this matter is to be referred back to the Public Information Officer and the Public Information Officer to deal with the same strictly in accordance with RTI

Act. The statutory period of 30 days shall start from the date of receipt of this Order.

17. Now, I shall refer to His Excellency, the Governor of Goa arrayed as Opponent No. 1/Respondent No. 1. In my Order dated 18.03.2011, I have observed that Governor enjoys complete immunity. The Governor is not answerable to any Court. It is also not necessary that Governor should be a party to the proceedings. The personal immunity under Article 361(1) is complete and, therefore, there is no question of Governor being made answerable to the Court and the Complaint against him is not maintainable. I do agree with the contention of Adv. C. Ferreira and Adv. M. Sonak on this aspect. I need not refer to their contentions in detail as I have already observed in the Order dated 18.03.2011.

Apart from this, the present Complaint is under R.T.I. As far as this Commission is concerned, Public Information Officer is the proper and necessary party. In my view, the Complaint against Governor is not maintainable and is liable to be dismissed.

18. The Complainant contends that heavy penalty be imposed on the Public Information Officer.

It is seen that request is dated 29.11.2010. The reply is promptly given. It is seen from the records that on earlier occasion also the Complainant had made a request for information and similar reply was given. In any case no malafides can be attributed to the Opponent and in my view this is not a fit case to impose penalty.

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

ORDER

Complaint is partly allowed. The matter/application is referred back to the Opponent No. 2 and Opponent No. 2 to deal with the same in accordance with law and within the prescribed time. The statutory period to start from the date of receipt of this Order.

The Complaint against Governor/Respondent No. 1/Opponent No. 1 is hereby dismissed.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 31st day of March, 2011.

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

