

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 01/SCIC/2011

Shri Ramakant D. Vengurlekar,
C/o. Mr. C. S. Baretto,
H. No. 206, Mazalvaddo,
Assagao, Bardez – Goa

... Complainant

V/s.

Mr. V. K. Jha, (IAS),
Secretary (Panchayati Raj),
Government of Goa,
Secretariat, Porvorim - Goa

... Opponent.

Shri C. S. Baretto, representative of the Complainant.
Adv. K. L. Bhagat for Opponent.

O R D E R

(13.06.2011)

1. The Complainant, Shri Ramakant D. Vengurlekar, has filed the present Complaint praying that the said Honorable Secretary (Panchayati Raj) has failed to confirm or rescind the order of the Additional Director –II of Panchayat in the capacity of Government Officer as stipulated in terms of section 178 sub-section 2 of the Goa Panchayati Raj Act, 1994; the said Order passed on 28.12.2010 be revoked or held null and void.

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

That the Complainant vide his application dated 01.11.2010 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Hon. Secretary (Panchayati Raj) and Public Information Officer, Secretariat, Porvorim-Goa. That the said Hon. Secretary (Panchayati Raj) issued his notice dated 02.12.2010 directing the said Complainant to appear before him on 17.12.2010 in appeal under section 19 of RTI Act, 2005 which was adjourned on 20.12.2010. That from the outset the Complainant failed to understand as to how the said Hon. Secretary(Panchayati Raj) has converted the application of the Complainant to appeal under section 19 of the RTI Act, 2005 when the said Hon. Secretary is not appointed as Appellate Authority being an IAS officer and thus he has grossly violated the rules of the RTI Act, 2005 by imposing an authority not vested in him and that there is no appeal under section 178 of the Goa Panchayati Raj Act, 1994. That the Complainant did not prefer any appeal. That

the said Hon. Secretary has allowed an L.D.C. working in the office of Dy. Director of Panchayats (North), Panaji Goa to appear on behalf of the said Dy. Director of Panchayats during the course of arguments when only the P.I.O can appear in RTI cases which further clearly exhibits his total ignorance of RTI Act or an abuse of his authority not vested in him as the order in question pertains to the Additional Director of Panchayats-II. That the said Hon. Secretary (Panchayati Raj) has further directed the said LDC, Miss. Rina Phadte to sign on the roznama (proceedings sheet) which is in total violation of RTI Act, 2005. That inquiry be initiated in terms of section 18 of RTI Act and action be taken as to whether the said order holds good in the given circumstances. The Complainant also refers to the petition filed by Mr. Virendra D. Vengurlekar, about application for Amendment, Amendment of Appeal and also another application for Amendment of Appeal on 07.07.2010. That all the applications have not been signed by Mr. Virendra D. Vengurlekar and despite this fact the Addl. Director-II of Panchayats, Panaji Goa has passed his order which needs to be thoroughly investigated. That the Appeal of Mr. Vaikunth D. Vengurlekar is still pending.

It is further the case of the Complainant that in terms of section 178 of Goa Panchayati Raj Act, 1994 sub section 2 when the Director makes an order under sub-section (1) he shall forthwith forward to the Government and the Panchayat affected thereby a copy of the order with a statement of the reasons for making it and Government may confirm or rescind the order or direct that it shall continue to be in force with or without modification permanently or for such period as it thinks fit. That the said Additional Director-II of Panchayat has erred in not forwarding his order to Government for confirming or for rescinding his order and that the said Hon. Secretary (Panchayati Raj) has only averred that the order passed by the said Additional Director-II of Panchayats is not required to be forwarded to his office as the said Additional Director of Panchayats has disposed off the case which is in contradiction to section 178 sub section 2 of Goa Panchayat Raj Act, 1994. Hence, the present Complaint.

3. The Opponent resist the Complaint and the reply of the Opponent is on record. In short, it is the case of Opponent that the present Complaint does not fall within the ambit of section 18 of the RTI Act, 2005 and hence ought to be dismissed in limine. On merits it is the case of the Opponent that the Complainant had made a complaint dated 01.11.2010 addressed to the

Opponent seeking information under section 6 of the RTI Act, 2005 regarding action taken on the order purportedly passed by the Additional Director of Panchayats-II in Appeal No. 89/2010 and 8/2010 under section 178 of the Goa Panchayati Raj Act, 1995. That it was the grievance of the Complainant that even though five months have elapsed, no order was passed by the Opponent under section 178(2) of the Act. Consequent upon receipt of the application dated 01.11.2010 made by the Complainant, the Opponent initiated the proceedings under section 19 of the RTI Act, 2005 and summoned the Dy. Director of Panchayats, before whom the said appeals were purportedly pending, alongwith the applicant/complainant. That during the course of hearing the applicant/complainant submitted that Appeal No. 89/2010 was still pending adjudication before the Additional Director of Panchayats-II, while Appeal No. 8/2010 had been disposed off. That it was also observed that appeals before the Additional Director of Panchayats-II were under section 66(4) of the Goa Panchayati Raj Act, 1994 and the same, unlike cases disposed off under section 178(1) of the Act, are not required to be forwarded to the office of the Opponent. That the application dated 01.11.2010 made by the Complainant was accordingly disposed off with the aforesaid observations vide order dated 28.12.2010. With regard to application under RTI Act the information sought does not come under the purview of RTI Act, 2005. That when the said application was received by the Opponent, the order dated 28.12.2010 was passed and a copy of the same was furnished to the Complainant within a period of thirty days from the date of the application and thereby complied with the provisions of section 7(1) of the RTI Act. That the Complainant has sought information as regards the action taken report and accordingly the Opponent had to dispose off the said proceedings which was pending before him within the stipulated time limit of thirty days from the date of receipt of application and as the information furnished to him admittedly is not misleading, incomplete or wrong information, the Complainant cannot have any grievance to come before this Commission with the present Complaint and, therefore, the Complaint is not at all maintainable. That the inquiry under section 18 of the RTI Act is not warranted in the present case in as much as the Opponent has not refused to accept the application of the Complainant nor refused access to the information sought by him nor failed to give response to the Complainant, nor made to pay unreasonable fee, nor gave misleading, incomplete or false information to the Complainant. That the Opponent has also mentioned about the definition of the

information. That in view of the information sought the Opponent had to furnish him the said order dated 28.12.2010.

4. Heard the arguments. Shri C. S. Baretto, representative of the Complainant argued on behalf of the Complainant. Adv. Shri K. L. Bhagat argued on behalf of Opponent.

Shri Baretto referred to the facts of the case in detail. According to him the Opponent treated the application as appeal and that the order passed is under Panchayati Act and the same is signed as Secretary of Panchayats. He attacked this order on all fours. He also filed written arguments in detail which are on record.

During the course of his arguments Adv. Shri Bhagat submitted that the order dated 28.12.2010 is itself in compliance of the information sought and that the Complainant ought not to have any grievance. He also relied on the Order and other material on record.

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?

It is seen that the Complainant vide his application dated 01.11.2010 sought certain information from the Hon. Secretary of Panchayats & Public Information Officer, 3rd Floor, Secretariat, Alto Porvorim, Alto Porvorim, Bardez-Goa. From the records it is seen that no reply has been furnished. However, there is an order dated 28.12.2010 on record. This appeal is styled as "BEFORE THE GOVERNMENT OF GOA, THROUGH ITS SECRETARY (PANCHAYATS), SECRETARIAT, PORVORIM, Panchayat RTI Appeal No. Ramakant/RTI/2010". According to the Complainant he had filed an application and the same was treated as appeal. According to him Opponent is neither Public Information Officer nor First Appellate Authority whereas according to Adv. Bhagat the order dated 28.12.2010 is itself in compliance of the same.

6. Section 6 of the RTI Act postulates that a person, who desires to obtain information under RTI Act, shall make a request in writing or through electronic mode, specify the particulars of information sought by him. Under this section

RTI request is to be made to the Public Information Officer of the concerned Public Authority.

Under section 7(1) Central Public Information Officer on State Public Information Officer, as the case may be, shall provide the information within 30 days of the receipt of the request on the payment of such fees as may be prescribed or reject the request on any of the grounds specified under section 8 and 9 of the Act. Under section 19(1) if any person who does not receive a decision within time schedule or is aggrieved by decision of P.I.O. may within 30 days prefer an appeal to such officer senior in rank to the P.I.O. as the case may be in each Public Authority. It is to be noted here that R.T.I. Act, in general, is a time bound programme between the administration and the citizen requesting information and every step will have to be completed within the time schedule prescribed for presentation of request and disposal of the same, presentation of First Appeal and disposal by the Appellate Authority.

It is pertinent to note that R.T.I. application cannot be considered as routine application. To be noted further the P.I.O and Appellate Authority are quasi judicial authorities appointed by the Government to dispose of the R.T.I. applications. Hence, it is expected of them to dispose the same personally.

7. In the case before me it appears that Complainant filed an application seeking information, however, the Opponent decided the same as appeal. The Opponent exhibited utter ignorance of R.T.I. Act and threw all the norms to the winds thereby causing unnecessary harassment to the Complainant which is legally not permissible. The application ought to have been sent to the P.I.O. as the same was addressed to him. In fact, the Opponent could not deal with the same since he was not the P.I.O. as contended by the representative of the Complainant. Secondly, the Opponent could not treat the same as appeal when no appeal was filed. Besides, Opponent was not/is not a First Appellate Authority as contended by C. S. Baretto, representative of the Complainant.

8. I have perused the order. It is seen that the notice issued is under section 19 of R.T.I. Act, 2005 and copy was sent to the Dy. Director (Panchayats North). Second notice dated 22.12.2010 is also on similar lines.

The order mentions Panchayat R.T.I. appeal. The order begins with the words: "This order shall dispose of the application dated 01.11.2010 filed by Mr. Ramakant D. Vengurleker under section 6 of the R.T.I. Act, 2005 regarding action taken". Apart from this the order does not speak of R.T.I. matter. According to Adv. Shri Bhagat for Opponent the same is in fact the action taken. In any case the same is not properly worded. Apart from that as pointed above no appeal was preferred. Therefore, this order is non-est as far as R.T.I. Act is concerned. Apart from that there was no Appeal under section 19 of the R.T.I. Act pending. Viewed in that context also this order is uncalled for as far as R.T.I. Application is concerned. The same exhibits utter disregard to the provision of the R.T.I. Act and sheer negligence on the part of the Opponent. In any case the order is not binding as far as R.T.I. is concerned. The order in so far as R.T.I. Appeal is concerned is uncalled for and premature. The Opponent to take steps to rectify or clarify the same.

9. Shri Baretto, representative of the Complainant contends that heavy penalty be levied against the Opponent.

No doubt the act deserves penalty and/or some sort of action. However Opponent is not a P.I.O. nor F.A.A. Assuming he was the F.A.A., then First Appellate Authority is not covered by the penal provisions under R.T.I. Act. In view of this it is not possible to levy penalty.

10. Adv. Shri Bhagat contends that the Complaint is not maintainable under section 18 of the R.T.I. Act.

Under normal circumstances the Complaint is not maintainable the way it is worded. Besides, the prayer also is slightly different. However, if the Complaint is dismissed the first casualty would be the R.T.I. Application of the Complainant and consequently R.T.I. Act as a whole. However such acts would not be tolerated in future as the same may amount to denial of information.

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

ORDER

The Complaint is partly allowed. The Opponent is directed to send the application of the Complainant to the concerned P.I.O. within 5 days from the

receipt of the order and the concerned P.I.O. to deal with the same strictly in accordance with R.T.I. Act having regard to time schedule.

The order dated 28.12.2010 in so far as R.T.I. Application is concerned is not binding on the Complainant and in fact is premature. The Opponent to take steps to rectify or clarify the same within 15 days from the receipt of the Order after proper notice to the parties.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 13th day of June, 2011.

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