

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 532/SIC/2010

Shri Rajesh S. Gaunkar,
People for Human & Nature Care,
H. No. 1299, Codli,
Tisk - Goa

... Complainant.

V/s.

Public Information Officer,
Office of Collector, South Goa,
Margao - Goa

... Opponent.

Advocate Shri A. Palkar for the Complainant.
Shri Agnelo Fernandes, representative of the Opponent.

J U D G M E N T **(16.08.2011)**

1. The Complainant, Shri Rajesh S. Gaunkar, has filed the present Complaint praying that the present Complaint be allowed and the Respondent/Opponent be directed to furnish forthwith the information as sought by the Complainant and that penalty be imposed upon the Complainant for failure and neglect to issue the information.

2. It is the case of the Complainant that the Complainant vide application dated 18.07.2010, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer, Office of the Collector, South Goa, Margao/Opponent. That the Complainant inquired with the Opponent as regards supply of the information sought and that the Opponent by letter dated 30.07.2010 replied wherein the Opponent has stated that the office is unable to provide information in the form of question and answers. Being aggrieved by the said reply the Complainant has filed the present Complaint on the various grounds as set out in the Complaint.

3. The Opponent resists the Complaint and the reply of the Opponent is on record. The Opponent vide application dated 08.11.2010 states that the Complainant failed to exhaust the remedial measures as provided under RTI Act since the Complainant failed to present appeal before the First Appellate Authority who is the Collector of South Goa and that directly filed the Complaint which is bad in law and not maintainable. In short, it is the case of the Opponent in the reply that the Complaint is not maintainable since the Complainant has not filed Appeal before the First Appellate Authority. That the reply was given to the Complainant within the stipulated time and that the contention of the Complainant that the reply given thereof rejecting the application is denied. That the Opponent has given reasons why the information sought was rejected and that the Opponent has reiterated the same in the reply which is on record. In short, according to the Opponent information sought in the form of question and answer was unable to be provided. That it was inadvertently not mentioned in the reply about First Appellate Authority and also about the period within which appeal is to be filed. According to the Opponent present Complaint is liable to be disposed off by remanding back the file to First Appellate Authority, Collector of South Goa District, Margao.

4. Heard the arguments. Advocate Shri Palkar argued on behalf of the Complainant and Shri Agnelo Fernandes, representative of Opponent argued on behalf of the Opponent.

Advocate for Appellant referred to the facts of the case in detail. According to him information asked is simple. However, same is not furnished. He next submitted that Complaint is maintainable. He also relied on the rejoinder to the reply dated 08.11.2010. According to the representative of the Opponent Complaint is not maintainable and the same is liable to be disposed off. He also submitted that the matter be remanded so that the same can adequately be dealt with.

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 application dated 18.07.2010 sought certain information from the PIO, office of the Collector. By reply dated 30.07.2010 Additional District Magistrate, South Goa, Margao informed the Complainant that their office is unable to provide the information in the form of question and answers in view of the order passed by the Hon'ble High court in Writ Petition No. 419 of 2007. This reply is within the stipulated period of 30 days. Being aggrieved by the same the Complainant has preferred the present Complaint.

6. The Opponent in the application dated 08.11.2010 and also in reply as well as during the course of arguments contend that Complaint is not maintainable.

First it is to be seen whether the Complaint is maintainable.

Under section 18(1) of the R.T.I. Act the Complaint may be filed if:-

(a) the Complainant is unable to submit an application for information because no Public Information Officer has been designated by the Public Authority;

(b) and the Public Information Officer or Assistant Public Information Officer refuses to accept the application for information;

(c) the Complainant has been refused access to any information requested under the Act;

(d) the Complainant does not receive a response from the Public Information Officer within the specified time limit;

(e) the Complainant has been required to pay an amount of fee of which is unreasonable; and

(f) the Complainant believes that he has been given incomplete, misleading or false information; and in respect of any other matter relating requesting or obtaining access to the record under the Act.

Thus Complaint can also be filed in case the Public Information Officer does not respond within the time limit specified under the Act.

In the case before me the information is sought, however, the same is rejected in view of the Writ Petition as mentioned hereinabove. To my mind even assuming the rejection is not valid yet the fact remains that good or bad the PIO acted within law. In any case the remedy lies of First Appeal.

I have perused some of the rulings of Central Information Commission. In a case [Appeal No. ICPB/A-16/CIC/2006 dated 13.04.2006] it was held that since the appellant has not preferred any Appeal before First Appellate Authority on the decision of C.P.I.O. after he received the same, he should do so at the first instance before approaching this Commission. In two other cases the Central Commission has refrained from entertaining appeal directly filed against the order of C.P.I.O. and has advised the Appellant to first file an appeal under section 19(1) with senior office. In any case procedure prescribed has to be followed. In any case the Complaint is not maintainable.

7. The Complainant contends that PIO has not informed about appeal, period within which appeal can be preferred, etc. In reply it is stated by the Opponent that the same was inadvertently not mentioned.

I have perused the reply. It did not clearly mention about period within which appeal can be filed as well as who the Appellate Authority was as stipulated under section 7(8) of the R.T.I. Act. The PIO must intimate details of First Appellate Authority, etc. while disposing the R.T.I. application.

8. In view of the above I am of the opinion that the matter is to be referred to the First Appellate Authority and the First Appellate Authority to dispose the same strictly in accordance with law. The Complaint filed is in time. Hence, I pass the following Order:-

ORDER

Keeping in view the circumstances of the case, I hereby direct that the Complaint be referred to the First Appellate Authority.

The First Appellate Authority shall consider this Appeal, hear the parties and dispose off the appeal under section 19(6) of the R.T.I. Act.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 16th day of August, 2011.

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

