

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Complaint No. 252/SCIC/2010

Mr. Kashinath Shetye,
R/o. Bambino Building,
Alto Fondvem, Ribandar,
Tiswadi – Goa

...Complainant

V/s

Public Information Officer,
Executive Engineer,
Works Division XXIII, P.W.D.,
Bicholim – Goa

... Opponent

Complainant in person.

Adv. Smt. N. Narvekar for Opponent.

ORDER
(26/09/2011)

1. The Complainant, Shri Kashinath Shetye, has filed the present Complaint praying that the information as requested by the Complainant be furnished to him correctly free of cost as per section 7(6); that penalty be imposed on the Public Information Officer as per law for denying the information to the Complainant; that compensation be granted as for the detriment faced by the Complainant for not getting the information and also for harassment caused for making him run from pillar to post and that inspection of document may be allowed as per rules.

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

That the Complainant had filed an application dated 22.02.2010, under Right to Information Act, 2005 ('R.T.I. Act' for short) thereby requesting the Public Information Officer (P.I.O.), Executive Engineer, Division XII, to issue information specified therein of the full P.W.D. which was transferred as per section 6(3) of the R.T.I. Act to the Opponent. That the P.I.O./Opponent failed to furnish the required information as per the application of the Complainant and, further, no inspection of information was allowed and rejected to give information as it was addressed to Executive Engineer, Division XII. That being aggrieved the Complainant has preferred the present Complaint on the various grounds which are set out

in the Complaint. It is further the case of the Complainant that the Complainant cannot file first appeal as S.P.I.O. is the FAA himself.

3. The Opponent resists the Complaint and the reply of the Opponent is on record. It is the case of the Opponent that the Complaint is misconceived in law and on fact and, therefore, the same is not maintainable and liable to be dismissed. On merits it is the case of the Opponent that the Complainant vide his application dated 22/19.02.2010 addressed to the PIO, Dy. Director, Administration, P.W.D., Panaji-Goa had requested in writing as per section 6(1) of the R.T.I. Act to provide information as mentioned therein and also inspection of all the files. That the PIO, Dy. Director of Admn., P.W.D., Panaji as per section 6(3) of the R.T.I. Act had transferred the said application alongwith 19 annexures thereto by his letter dated 24.02.2010 to this Opponent. That all the 19 annexures were Xerox copies with court fee stamp of Rs.10/-. That the information sought by the Complainant vide annexure I to XIX are embodied in the Manual of Central Public Works Department, 2007 and that they are mentioned in detail in the reply. That the Complainant ought to have adhered to section 6(1) of the RTI Act in seeking information from the Opponent. That the Opponent in good faith informed the Dy. Director (Admn), P.W.D. vide letter dated 08.03.2010 that the information sought is not applicable to the Division of the Opponent. That the present Complaint refers only to the information pertaining to annexure III.

That the Opponent states about the cost of information, attempt of the Complainant to delay the information, about vague request of information in this reply. That in pursuance of the letter dated 08.03.2010 the Complainant should have filed a proper application to the Opponent. That no first Appeal is preferred. According to the Opponent the Complaint is to be dismissed.

4. Heard the arguments. The Complainant argued in person and the learned Adv. Smt. N. Narvekar argued on behalf of the Opponent.

The Complainant referred to the facts of the case in detail. According to him Complaint is maintainable and relied on the Judgment, copy of which is on record. According to him information has been refused.

The learned Adv. for the Opponent argued on similar lines as per the reply. According to her no stamp is paid. Secondly, there was no application to the concerned authority. She also submitted that Complaint is not maintainable. According to the Advocate for the Opponent, Complaint is liable to be dismissed. Advocate for Opponent also referred to Section 6(1) and 6(3) of the RTI Act.

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 by Application dated 22/19.02.2010 the Complainant sought certain information from the PIO, Dy. Director (Admn)., P.W.D. The information was of full Public Works Department from 01.01.2008 till 01.01.2010 as follows:-

All 19 Annexures and also Inspection of all files. All 19 annexures mention PIO, Executive Engineer, XII, PWD, Sanguem-Goa.

It is seen that by application dated 24.02.2010, the Dy. Director (Admn), P.W.D. transferred the said application to PIO, Water Resources Department, Junta House, Panaji; PIO, GSIDC, Patto Panaji and PIO, Executive Engineer Div. XXIII, P.W.D., Bicholim-Goa.

By letter dated 08.03.2010 the PIO/Opponent informed the Dy. Director of Admn, that the enclosed application of Shri Shetye is addressed to Executive Engineer, Div. XII, P.W.D. and hence the information sought is not applicable to this Division. Copy of the letter was sent to the Complainant. Instead of clarifying, the Complainant on 12.03.2010 filed the present Complaint.

In fact, letter dated 08.03.2010 cannot be construed as denial of information.

6. Advocate for the Opponent contends that the Complaint is not maintainable. According to the Complainant, it is maintainable and relied on Writ Petition No. 3262 (MB) of 2008 Public Information officer v/s. State Information Commission, U.P. & Others.

It is to be noted here that under section 18(1) of the 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) the Public Information Officer or Asst. 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;
- (f) the Complainant believe 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.

The 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 Application seeking information was transferred under section 6(3) to the Opponent herein. Since the Application mentioned Executive Engineer XII, P.W.D., Sanguem, the Opponent informed that the same does not belong to the Opponent. It does not appear that the application was rejected by letter dated 08.03.2010. In any case the remedy lies of First Appeal. I have perused some of the rulings of Central Information Commission on the point. 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 the C.P.I.O. after he received the same, he should do so at the first instance before approaching this Commission.

In *Virendra Kumar Gupta v/s. Delhi Transport Corporation* (F. No. CIC/AT/C/2007/100372, dated 22.02.2008) it was observed as under:-

“Although section 18 of the R.T.I. 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 the petitions is about the quality and the extent of the information furnished. Such matters are appropriately the 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 consideration of the above, petitioner is directed to file his first appeal before the Appellate Authority and should he still be dissatisfied with the orders of the Appellate Authority he may approach the Commission in Second Appeal/Complaint.”

I have perused the Judgment in the Writ Petition relied by the Complainant. I have also perused *State of Manipur & Anr V/s. The Chief Information Commissioner & Anr 2011 (1) J.D. (Gauhati High Court) (Imphal Bench)*.

7. Adv. Smt. N. Narvekar next contended about the transfer of the application. According to her, application ought to have been filed before concerned Public Information Officer. According to her section 6(3) is not attracted.

Section 6 reads as under:-

“6. Request for obtaining information.

1. Any person who desires to obtain any information under this Act, shall make a request in writing or through electronic means

in English or Hindi or in the official language of the area in which the application is being made accompanying such fee as may be prescribed to,

a)

b)

specifying the particulars of the information sought by him or her,

Provided that

.....

2.

3. where an application is made to a Public Authority requesting an information, --

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

The public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer;

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

8. Sub-section (1) of section 6 expressly requires that a person who desires to obtain information under the Act shall make a request alongwith the prescribed fee to the Public Information Officer of the concerned Public Authority specifying the particulars of the information. Sub-section (3) carves an exception to the requirement of sub-section (1). As per the same where a Public Authority, to whom an application for information is made, finds that information demanded is not with it but is held by some other authority, it is duty bound to transfer the application for information to the concerned Authority under intimation to the applicant/information seeker. In my view sub-section (3) of section 6 cannot be read in isolation, sub-

section (1) of section 6 being the main section. Intention of the Legislature appears to be good considering the R.T.I. Act is a people friendly Act. The pure objective behind enacting this provision is perhaps to lessen the travails of an information seeker, lest he is lost in the labyrinth of procedural technicalities.

From the above it is clear that application is to be made to the Public Information Officer of concerned Department.

9. I have perused some of the rulings of the Central Information Commission as well as State Information Commission.

(i) In a case (Shri S. C. Agrawal V/s President's Secretariat (Appeal Nos. CIC/WB/A/2008/01033 &1423 dated 05/06/2008 and 29/08/2008) the Commission observed that neither Department of Justice nor PMO can answer such a question of appellant by stating that the original letter stood transferred. Now, therefore, if Appellant Shri Agrawal seeks to know what action those Ministries have taken on the complaint of 21/01/2008, transferred to them by the Rashtrapati Bhawan, such a question must be addressed u/s 6(1) to the CPIO of the concerned public authority.

In this case, this has not been done. The appeals being unsustainable were dismissed and directed the appellant to apply to the CPIO, Department of Justice for the purpose.

(ii) In A Gangopadhyaya V/s South East Central Railway, Raipur (Appln. No.CIC/OK/A/2006/00453 dated 02/01/2007) where appellant asked for 20 items of information each of which related to a different department/activity and the appellant was asked to put in separate applications for each of the items of information, the respondent's reply was up held by the Commission.

(iii) Veeresh Malik V/s Ministry of Petroleum Natural Gas New Delhi (case No. 261/IC/(A)2006 F Nos CIC/MA/A/2006/00580 dated 11/09/2006) where appellant submitted applications to the Ministry of Petroleum and Natural Gas and expect transfer of the same under section 6(3) to the concerned oil companies, the C.I.C. held it is not

understandable why applicant expects to transfer the same to oil Companies when oil Companies themselves are public authorities under the Act.

(iv) In *Abid Ulla Khan V/s Northern Railway* (case No. 1320/IC/(A) 2007 dated 10/10/2007) it is observed that Appellant was well aware about the availability of information in the office of the CPIO in Lucknow, yet he chose to file his application to the Delhi Office, which has resulted in loss of time. It is further observed that information seeker should apply for information to the CPIO, who may be in possession of the requisite information.

State Information Commissions also have held similar view.

In *Gurubaksh Singh v/s. Public Information Officer, O/o. Director Local Bodies & Anr* (2008) ID 469 (SIC Punjab) this aspect has been extensively dealt. The relevant observations are in para 7 and 8.

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

10. In the case before me the request is not rejected as such. However, PIO states that the application is addressed to the Executive Engineer, Division XII, P.W.D. and hence information sought is not applicable to his Division.

During the course of his arguments the Complainant states it includes the Opponent herein. In any case there is no harm in furnishing the information by the Opponent.

The Complainant also seeks inspection of all files. The same can be given. The Opponent can fix a date for inspection and thereafter the information could be furnished. The whole process is to be completed within 30 days.

11. Coming to the prayers in the Complaint information is to be furnished. However, it is seen that the application dated 22.02.2010 was transferred to the Opponent by letter dated 24.02.2010. The Opponent replied by letter dated 08.03.2010 to the Dy. Director with copy to the Complainant. In view of this there is no delay as such. Since there is no delay section 7(6) of

R.T.I. Act is not attracted so also penalty. However, inspection can be given.

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

ORDER

The Complaint is partly allowed. The Opponent is hereby directed to furnish the available information as sought by the Complainant vide his application dated 22.02.2010 within 30 days from the receipt of this Order.

The Opponent to give the inspection of documents/files to the Complainant on a mutually agreed date but within 8 days from the receipt of this Order and thereafter on inspection the information be furnished as specified by him. The whole process to be completed within 30 days.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 26th day of September, 2011.

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

