

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Complaint No. 437/SCIC/2010

Shri Uday A. Priolkar,
H. No. C-5/55, Mala,
Panaji - Goa

...Complainant

V/s

1) V.G. Salkar,
Public Information Officer,
State Registrar-cum-Head of Notary,
Shrama Shakti Bhavan,
Panaji – Goa

... Opponent No. 1.

2) Shri John Nazareth,
General Secretary,
Goa Government Employees Association,
Govinda Bldg., 2nd Floor,
Panaji – Goa

... Opponent No. 2.

Complainant in person.

Shri Eusebio Braganza for Opponent No. 1.

Adv. Smt. Harsha Naik for Opponent No. 2.

ORDER
(15.09.2011)

1. The Complainant, Shri Uday A. C. Priolkar, has filed the present complaint praying that information sought be provided; that Opponent be directed to pay cost of Rs.250/- to the Complainant and that disciplinary action against Opponent in terms of section 20(2) of the R.T.I. Act.

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

That the Complainant, vide application dated 04.05.2010 sought certain information under Right to Information Act, 2005 ('R.T.I.Act' for short) from the Public Information Officer (P.I.O.)/Opponent No. 1. That the Opponent by reply dated 20.05.2010 informed the Complainant that the information sought vide letter dated 04.05.2010 is not filed by the Goa government Employees' Association. That the P.I.O. should have obtained the said information from the General Secretary, G.G.E.A. as they are maintaining the said information which is asked by the Complainant vide letter dated 04.05.2010. That the P/I.O. has failed to follow the proper

procedure as per the R.T.I. Act. That the Complainant is entitled to receive the said information. Hence, the present Complaint on various grounds as set out in the Complaint.

3. The Opponents resist the Complaint and their reply are on record.

It is the case of the Opponent that vide reply dated 20.05.2010 the Opponent informed that information from Sr. No. 1 to 10 is not filed in the office of Opponent No. 1. That the Opponent No. 1 also submitted the registration number of Goa Government Employees Association bearing registration No. 50 Goa/87, to the Complainant. That the Complainant was very well aware that the information sought by him is in possession of Goa Government Employees' Association and not with the Opponent No. 1 which is clear from the averment in the Complaint. That the Opponent No. 1 has neither failed nor refused to provide the information as sought by the Complainant. The Opponent denies the grounds as set out in the Complaint.

It is the case of the Opponent No. 2 that the Complaint filed by the Complainant before this Commission is not tenable on facts nor in law as much as Complainant has approached this Commission by impersonating and misrepresenting himself. That the Complainant is known as 'Shri Uday A. Chari' and not as Uday A.C. Priolkar. That he is a Government Employee and that he cannot use two names at a time. That the Opponent No. 2 does not come within the ambit of Right to Information Act. That this Commission has no jurisdiction over the Opponent No. 2. That the Complaint is filed with malafide intention, ulterior motives and illegal gain just to harass Opponent No. 2 and also to pressurize him. That the Opponent No. 2 does not fall under the domain of R.T.I. Act and not a 'Public Authority' as defined under section 2(h) of the R.T.I. Act. The Opponent No. 2 denies the grounds as set out in the Complaint. That the Opponent No. 2 is not duty bound to provide any information as sought. That the Complainant has failed to make out a case against the Opponent No. 2. That the Opponent No. 1 has already provided the information. That Opponent No. 2 is not Public Authority nor the designated Public Information Officer. According to Opponent No. 2 proceedings against the Opponent No. 2 ought to be dropped.

4. Heard the Complainant. Adv. Smt. Harsha Naik for Opponent No. 1 and Shri Eusebio Braganza, the representative of the Opponent No. 2. Written arguments of the Complainant and Opponent No. 2 are on record.

Opponent No. 1 has expired and the death certificate is on record. The Opponent No. 2 has filed an application dated 21.10.2010 to discharge him from the Complaint. There is also a prayer to take action against the Complainant on account of 'name'.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties and also the written arguments on record.

It is seen that the Complainant vide application dated 04.05.2010 sought certain information from the Opponent No. 1. By reply dated 20.05.2010 the Opponent No. 1 furnished the information stating as 'Not filed'. The information as sought consisting of 10 points Sr. No. 1 to 10 and the same pertained to Goa Government Employees Association. Being aggrieved the Complainant has filed the present Complaint.

Admittedly, the information was not filed with the Opponent No. 1. That means the information was not with the Public Authority. Under R.T.I. Act the right relates to information that is held by or under the control of public authority. If the Public authority does not hold information the Opponent No. 1 cannot provide the same under the Act.

6. The Complainant contends that the P.I.O./Opponent No. 1 should have obtained the said information from General Secretary, G.G.E.A. as they are maintaining the said information. The Complainant has also relied on Societies Registration Act, 1979 particularly Section 4-A, i.e. Power of Inspector General to call for information or returns from governing body of Society and provisions relating thereto.

On the Complainant's own showing the information was not with the P.I.O. Under R.T.I., P.I.O. is not required to collect and/or compile the information on the demand of a requester nor is he expected to create a fresh one merely because some information seeker has asked for it.

Whether P.I.O. could invoke section 5 or 6(3) of the R.T.I. Act. Apparently not as Opponent No. 2 does not come under the purview of R.T.I. according to Opponent No. 2.

Complainant's next contention about Section 4-A of Societies Registration Act as referred above. If the said section is not invoked this Commission under R.T.I. cannot direct to invoke the same. It is for the Complainant to take the issue before Competent Authority.

7. During the course of arguments and also in the written arguments the Complainant contends that Opponent comes within the meaning of Public Authority as contemplated under section 2(h) of the R.T.I. Act. This is vehemently objected by the representative of the Opponent No. 2. According to him R.T.I. Act is not applicable to the Opponent No. 2. Complainant has relied on various rulings copies of which are on record.

It is to be noted here that this not the issue in the original application. Even in the Complaint there is no prayer to that effect but Opponent No. 2 has been impleaded as party. To my mind this issue cannot be taken in the Complaint casually. The same has to be addressed right from the stage of P.I.O. The Complainant has to satisfy as to how Opponent No. 2 comes within the meaning of section 2(h) of the R.T.I. Act. Merely saying about Government premises is not sufficient. However I want to clarify that I do not wish to opine on this aspect herein as proper opportunity is to be given and it is open to the Complainant to take the same properly.

I have carefully gone through the rulings relied by the Complainant. There is no dispute about the proposition laid down. But the same cannot be imported herein without giving proper opportunities to parties.

8. I have also considered the aspect of names of Complainant. This issue is to be taken before the proper forum.

9. Regarding maintainability of the Complaint. Whether the Complaint in the present form is maintainable.

In the case before me the application seeking information is duly replied, i.e. information furnished stating that it is not filed. It does not

mean that the P.I.O. failed to furnish or reply. In any case the remedy lies of First Appeal.

I have perused some of the rulings of Central Information Commission on the point.

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 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.”

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

10. Regarding delay. Considering the application and the reply there is no delay as such. Hence the question of penalty does not arise.

11. In view of all the above I am of the opinion that if the information is now filed the same can be furnished. I am aware that earlier P.I.O. Shri Salkar has expired. The present P.I.O. can very well furnish the information if the same is available by now. Hence, I pass the following Order:-

ORDER

The Complaint is partly allowed. The present P.I.O. of State Registrar-cum-Head of Notary is hereby directed to furnish the information sought by the Complainant vide his application dated 04.05.2010 if the same is available within 30 days from the receipt of this Order.

In case the same is not so far filed/or not available, to inform the Complainant accordingly and report compliance.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 15th day of September, 2011.

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