GOA STATE INFORMATION COMMISSION
AT PANAJI
CORAM: Shri M. S. Keny, State Chief Information Commissioner

Complaint No. 269/SCIC/2010

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

V/s

Public Information Officer,
Executive Engineer,
Works Division VIII,(Bldg-South),
P.W.D. Fatorda, Margao – Goa … Opponent

Complainant in person.
Adv. Smt. N. Narvekar for Opponent.

ORDER
(27.10.2011)

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 the 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 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, Executive Engineer, Division XII, P.W.D. to issue information specified therein which was transferred as per section 6(3) of the R.T.I. Act to the Opponent. That the Public Information Officer(P.I.O.)/Opponent failed to furnish the required information as per the application of the Complainant and further to pay a sum of Rs.30,000/- without arriving at calculation of pages as per section 7(3)(a). That considering the said non-action on behalf of the Opponent of the R.T.I. Act, 2005 and being aggrieved by the said Order dated 09.03.2010 the

Complainant has preferred the present Complaint on various grounds as set out in the Complaint.

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 facts, misleading 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 contained therein. 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 enclosures thereto by his letter dated 24.02.2010 to this Opponent. That on perusing the contents of each and every annexure attached to the said application dated 22/19.02.2010, it is evident that the 19 so called annexures were the Xerox copies of the applications accompanied by an application fee of Rs.10/- r/w. section 6(1) of the said R.T.I. Act, 2005 which were separately addressed to the PIO, the Executive Engineer, W.D.XII, P.W.D., Sanguem-Goa. That the information sought by the Complainant vide annexure I to XIX are embodied in the Manual of Central Public Works Department, 2007. That the information sought by the Complainant as per annexures enclosed to the said application are detailed in the reply filed by the Opponent. That the Complainant ought to have adhered to section 6(1) of the RTI Act in seeking information from the Opponent. That it was decided to provide information on payment of further fee representing the cost of providing the information to the Complainant. Therefore the Opponent vide letter dated 09.03.2010 had intimated the Complainant as per section 7(3) of the R.T.I. Act. That the present Complaint refers solely to the application seeking information pertaining to annexure-V annexed to the application.

That the Opponent states about cost of information, attempt of the Complainant to delay the information, about vague request of information in this reply. That the request of the Complainant could not be disposed of as per section 7(1) of the said R.T.I. Act 2005 since Complainant failed to make advance payment towards the cost of providing information till date. 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. He next submitted that information has been refused.

The learned Adv. for the Opponent advanced elaborate arguments on similar lines as per the reply. According to her no stamp is paid and there was no application to the concerned authority. She also submitted that Complaint is liable to be dismissed as the same is not maintainable. She referred to Section 6(1) and 6(3). She also referred to the functions of the Opponent's division.

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 22/19.02.2010 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 letter dated 24.02.2010, the Dy. Director (Admn), P.W.D. transferred the said application under section 6(3) of the R.T.I. Act, to P.I.O., Water Resources Department, Junta House, Panaji; PIO, GSIDC, Patto Panaji and PIO, Executive Engineer Div.VIII, P.W.D., Margao-Goa i.e. the Opponent herein.

By letter dated 09.03.2010 the Executive Engineer informed the Complainant that as per preliminary estimate, the cost of documents works out to be Rs.30,000/- however, the charges shall be levied as per actuals depending on the copies required for. It was further informed that the inspection of documents can be done on Tuesdays and Fridays at 2:00p.m. to 3:00p.m. in Division Office and in Sub-division-I Margao SD II Margao, S.D.III Canacona and SD-IV Vasco on Mondays and Thursdays at 3:00 to 4:00p.m. Copy of the same was sent to all J.Es/A.Es/ASW/D.A./HC and also to the Dy. Director (Admn) P.W.D. Instead of availing the information

the Complainant preferred the present Complaint being aggrieved by the said letter dated 09.03.2010.

In fact letter dated 09.03.2010 cannot be construed as denial of information.

6. Complainant contends that the order dated 09.03.2010 is passed, is against the R.T.I. Act, 2005 as no calculation of pages as per section 7(3)(a) of R.T.I. Act, thereby amount has not been arrived at and to drive away the Complainant an amount of Rs.30,000/- is quoted.

Under sub-section (3) of section 7 of the R.T.I. Act where a decision is made by C.P.I.O. or S.P.I.O. that the information can be furnished upon payment of further fee by the applicant such further fee represents the cost of providing the information. The C.P.I.O. or S.P.I.O. shall send written intimation to the applicant containing the following:-

(a) details of further fees representing the cost of providing the information as determined alongwith calculations made to arrive the amount under provisions of sub-section (1) of section 7 requesting the applicant to deposit the said further fee.

The P.I.O./Opponent has stated in the said letter "as per preliminary estimate the cost of documents works out to be Rs.30,000/-. However, charges shall be levied as per actuals depending on copies required for."

One thing is clear that Complainant is not told to deposit Rs.30,000/-. Moreover no calculation has been given. According to the Complainant this is to drive him away from seeking information. Whether such thing is permissible.

I have perused some of the rulings of C.I.C. on this point.

(i) In Dr. Balwant Singh *v/s.* BSNL (Application No. 27/ ICPB/2006 dated 07.06.2006) the applicant had sought for information relating to whole of the nation since January 2001 and onwards though such demand is against the spirit of the Act. However the Chief General Managers were asked to supply the information. They required to collect the information from 322 field units and documents ran into 1920 pages. The applicant was thus required to deposit Rs.3,840/- @ Rs.2 per page. Similarly, other information required needed further fee of Rs.5500/-. The applicant was intimated to

deposit the sum of Rs.9340/- so that information could be provided. The appellant cannot allege that by seeking exorbitant cost BSNL was denying him the information. Since the C.P.I.O. had already collected the information, the Commission commended the steps taken by the C.P.I.O. In fact each and every information sought by the applicant cannot be expected to be readily available at a single point.

In Chandravadan Pandya *v/s.* Western Railway Appln, No. CIC/OK/A/2006/00319 dated 19.01.2007) information about the abandoned Railway properties in the Jamnagar District was sought while some information was supplied, the P.I.O. informed that the assessment of the abandoned land by the Revenue Authorities would cost about Rs. 1 lakh. The P.I.O. asked the Appellant to deposit the same. The Respondents stated before the Commission that evaluation was to be done by the Revenue Department only when they had to give it to Central Government or the State Governments or the PSUs. The explanation was acceptable to the Commission.

No doubt collection and compilation of information would definitely involve time and cost and under the circumstances P.I.O. is justified in informing the Complainant about fees. In view of the above rulings it cannot be said that the amount mentioned is to drive the Complainant away from seeking information.

7. 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. By letter dated 09.03.2010, as mentioned hereinabove, the Complainant was informed about the cost of documents and also told about the inspection of documents. The application was not at all rejected. Even assuming the cost was more the Complainant could ascertain and then prefer First Appeal. Even otherwise in such a situation remedy is of First Appeal.

[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).

The Hon'ble High Court of Judicature at Bombay Goa Bench, has also held the same view in Writ Petition No. 132 of 2011 with Writ Petition No. 307 of 2011.

8. 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."

9. 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.

10. 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 upheld 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.

11. In the case before me the request is not rejected as such. By letter dated 09.03.2010 the Complainant is informed about the preliminary estimate of the cost of documents.

During the course of arguments the Complainant submitted that actual cost, pages is not furnished. It is true, however, the same does not make much difference. In any case there is no harm in furnishing the information by the Opponent.

The Complainant also seeks inspection of all files. The same was offered by the same letter dated 09.03.2010. However, the Complainant it appears did not take. In any case 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.

12. 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 replies by letter dated 09.03.2010. In view of this there is no delay as such. Since there is no

delay section 7(6) of the R.T.I. Act is not attracted so also penalty. Regarding inspection the same can be granted.

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

O R D E R

The Complaint is partly allowed. The Opponent is hereby directed to furnish the available information as sought by the Complainant vide his application dated 22/19.02.2010 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 10 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 27th day of October, 2011.

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