

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.472/SIC/2010

Shri Uday A. C. Priolkar,
R/o. H. No.C5/55, Mala,
Panaji – Goa

... Complainant

V/s

1. The Public Information Officer,
Shri V. G. Salkar,
State Register Cum Head of Notaries,
Panaji-Goa
2. Shri M. L. Shetkar,
President,
Goa Government Employees Association,
Panaji-Goa
3. The General Secretary,
Shri John Nazareth,
Goa Government Employees Association,
Panaji-Goa

... Respondent

Complainant absent.

Opponent No.1 absent(expired).

Opponent No.2 and 3 absent.

Smt. Surekha Naik present from the Office of Opponent No.1.

Adv. N. Dias for opponent No.1 present.

ORDER
(31/10/2011)

1. The Complainant, Shri Uday A. C. Priolkar, has filed the present complaint praying that the opponent be directed to furnish the information sought by him vide his application dated 02/06/2010; that the opponent be directed to pay the cost of Rs.250/- per day to the complainant till he received the information sought by him and that disciplinary action be initiated against the opponent.

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

That the complainant vide his application dated 02/06/2010 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 refusal by the opponent to supply the information is contrary to

the provisions of the Law laid down under sec 3 and contrary to very purpose of Right to Information Act. That the opponent have acted in perverse and illegal manner by failing to consent and furnish the information sought by the Complainant within 30 days of the request as stipulated by Sec.7(2) of the Act. That the complainant was prejudiced by the act of the opponent. That the opponents have ignored the provisions of the Act. Being aggrieved the complainant has filed the present complaint.

3. The opponents resist the complaint and their replies are on record. It is the case of the opponent No.1 that vide office letter dated 12/7/2010 furnished the information sought by the complainant vide his application dated 2/6/2010 which was obtained from the office of the District Registrar, North, Panaji, in which the information has been disclosed. The opponent No.1 denies the grounds as set out in the complaint. That information is furnished and that nothing has been concealed. That the application of the complainant dated 2/6/2010 was referred to the concerned section on 4/6/2010 asking for information and the same was received on 30/6/2010 which in turn has been furnished immediately vide application dated 12/7/2010 to the complainant. That the contents of ground III are denied. According to the opponent in no way the provisions of the R.T.I. Act have been violated. According to the opponent No.1, the complaint is liable to be dismissed.

It is the case of the opponent No.2 that the complaint is not maintainable firstly because opponent No.2 is not designated as P.I.O. or A.P.I.O. and hence cannot be made a party. Secondly the Goa Government Employee's Association (GGEA) is not a State/Public Institution and the R.T.I. Act is not applicable as this organization is neither controlled or financed by the State Government. Thirdly the GGEA is not the public authority as defined in Sec.2(h) of the R.T.I. Act. That the complainant never made any request to GGEA for seeking information knowing that this organization is not public authority. That the Complainant has no locus standi to make a complaint against GGEA before this authority and unnecessarily impleaded as party. That the complainant never sent his original application dated 2/6/2010 to G.G.E.A. on the basis of which the complaint is filed. That G.G.E.A. is not a public authority under R.T.I. Act. According to opponent No.2, the complaint is liable to be dismissed.

It is the case of opponent No.3 that the complaint is not maintainable firstly because opponent No.3 is not designated as P.I.O. or A.P.I.O.. Secondly the Goa Government Employee's Association (G.G.E.A.) is not a State/Public Institution and R.T.I. Act is not applicable as the organization is neither controlled nor financed by the State Government. Thirdly the GGEA is not the public Authority as defined in Sec 2 (h) of the R.T.I. Act. Fourthly the Complainant never made any request to G.G.E.A. for seeking information knowing that this organization is not the public authority. That the Complainant has no locus standi to make complaint against G.G.E.A. before this Authority. In short according to opponent No.3 R.T.I. Act is not applicable to their organization and that complaint be dismissed.

4. Heard the arguments. Complainant filed written arguments and also made oral submissions. Adv. Shri N. Dias argued on behalf of the opponent No.1 and Shri A. Nasnodkar argued on behalf of the respondent No.2 and 3.

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 2/6/2010, the complainant sought certain information from P.I.O. State Registrar-cum-Head of Notaries Services. It appears that by reply dated 4/6/2010 the P.I.O. transferred the application to the District Registrar, North asking to furnish the information within 4 days. By letter dated 30/6/2010 the District Registrar sent the information to the State Registrar-Cum-Notaries. By letter dated 12/7/2010, the P.I.O. called the complainant to pay the amount of Rs.12/-. By letter dated 12/7/2010 the information was furnished. The information sought consisted of 8 points i.e. Sr.No.1 to 7 and 8 and it pertained to Goa Government Employees Association. In respect of point No.1 and 3 it is stated as "not filed". In respect of point No.2, 4, 5 it is referred as N/A and in respect of 6 and 7 the same was furnished.

It is the contention of the complainant that information submitted by respondent No.1 is false, incomplete and misleading as per Right to Information Act, 2005. That the information has been denied to the

complainant in order to cover up the illegality and to protect respondent No.2.

Admittedly the information sought has not been filed i.e.in respect of point No.1 and 3 and in respect of point No.2, 4 and 5 not available (N.A.) Under RTI 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 next contention of the complainant is that P.I.O./Opponent No.1 should have directed opponent No.2 to furnish the information to the complainant under Sec.20(A)of Societies Act 1860 if the information sought by the complainant was not available with him.

On the Complainant's own showing the information was not with the P.I.O. Under R.T.I. Act P.I.O. is not required to collect and/or compile the information on the demand of a requester nor he is expected to create a fresh one merely because some information seeker has asked for it. Whether under R.T.I., P.I.O. could invoke Sec.5(4) or 6(3)of the R.T.I. Act. Apparently not as opponent No.2 and 3 contend that they do not come under the purview of the R.T.I. Act.

Regarding Sec.20(A) of the Societies Act. If this Section is not invoked this Commission cannot direct to invoke the same. It is for the complainant to take the issue before Competent Authority.

7. Now I shall refer to the contention of the complainant that opponent No.2 and 3 come within the purview of R.T.I. Act. This is vehemently objected by the opponent No.2 and 3. According to them R.T.I. Act is not applicable to them and that they are not Public Authority U/sec.2(h) of the R.T.I. Act. The complainant has relied on various rulings in the written arguments.

It is pertinent to note here that this is not the issue in the original application. Even in the Complaint there is no prayer to that effect though opponent No.2 and 3 have been impleaded as parties. To my mind this issue cannot be taken in this complaint casually. The same has to be addressed right from the stage of P.I.O. Complainant has to

satisfy as to how opponent No.2 and 3 come within the meaning of Sec.2(h) of the R.T.I. Act. The Complainant submits that Goa Govt. has allotted 4 "C" type quarters at Patto, Panaji to G.G.E.A. G.G.E.A comes under definition of Public Authority. Merely saying about Government quarters is not sufficient. I do not wish to opine on this aspect herein as according to me proper opportunity is to be given to the parties to prove about their respective case. By deciding the issue in this complaint, the opponent No.2 and 3 would lose a valuable right of First Appeal as well as second Appeal. It is open to the complainant to take the said issue properly.

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

8. Whether the complaint is maintainable. Normally the party should prefer First Appeal and should not skip that Forum. The Complainant to take note of the same in future.

9. Regarding aspect of delay. It is seen that application is filed on 2/6/2010. The application was sent to District Registrar by letter dated 4/6/2010. The same was replied by the District Registrar by letter dated 30/06/2010. The information was sent by letter dated 12/7/2010. If date 4/6/2010 is concerned then there is about 7 to 8 days delay on the part of P.I.O. At the relevant time Shri V.G. Salkar was the P.I.O. However he expired on 14/4/2011. In view of this there is no point in proceeding with penal action.

10. In view of all the above, I am of the opinion that if the information is now filed the same can be furnished. The present P.I.O. can furnish the same if the said information is filed and/or 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

2/6/2010 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 the present P.I.O. to inform the complainant accordingly and report compliance.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 31st day of October, 2011.

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