

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

**Complaint No. 53/SCIC/2011**

Shri Sanjay Vinayak Barve  
Opp. Tulsimata Pandurang Sausthan,  
Odlem Bhat Taleigao,  
P.O. Caranzalem, Goa ... Complainant

**V/s**

Goa Chess Association,  
Through its General Secretary,  
Mr. Arvind Mhamal,  
St. Cruz ... Opponent

Complainant alongwith his representative  
Shri V. A. Kamat  
Adv. Shri Ulhas Shetye

**ORDER**  
**( 22/11/2011 )**

1. The Complainant, Shri Sanjay Vinayak Barve, has filed the present complaint praying that the opponent be directed to appoint the Public Information Officer, forthwith; the directions be issued to furnish the information sought immediately on appointment of the Public Information Officer, that directions be issued to furnish the information free of charge and that compensation be awarded to the complainant for causing him mental and physical harassment.

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

That the complainant, vide his three applications dated 25/10/2010, sought certain information under Right to Information Act ('R.T.I.' Act for short) from the opponent/General Secretary, Goa Chess Association. That by letter dated 09/12/2010, the opponent refused the information on the ground that the opponent/public authority had not appointed any Public Information Officer till date. That by the said letter the opponent further informed the complainant, that they have written to

the Sports Authority of Goa for clarification that as to whether the opponent comes under the purview of R.T.I. Act, 2005. That the complainant has not received any further communication from the opponent till date. That in response to the earlier application dated 28/09/2010, the opponent by his letter dated 19/10/2010 has refused to furnish the information to the complainant on the ground that Court Fee Stamp affixed to the application was insufficient. That the very fact that the opponent has sought clarification from Sports Authority of Goa confirms that the opponent/Public Authority is recognized by and registered with the Sports Authority of Goa. That the Sports Authority of Goa vide letter dated 14/19<sup>th</sup> May, 2010 has communicated to all the sports authorities recognized by Sports Authority of Goa that they are covered under the provisions of R.T.I. Act, 2005. That this has been further notified by Sports Authority of Goa in the Official gazette, Series III, No.15 dated 8<sup>th</sup> July, 2010. That the opponent is substantially financed by the Government. That during the year 2010, the opponent has received grant of Rs.4,60,116/- (Rupees four lakhs, Sixty thousand, one hundred and sixteen only) from the Sports Authority of Goa as can be seen from the statements obtained from the Sports Authority of Goa. It is the case of the complainant that the opponent is well aware that it is public authority and that it is covered under the provisions of R.T.I. Act and has deliberately refused to furnish the information sought by the complainant by misleading the complainant. Being aggrieved by the refusal of information, the complainant has filed the present complaint on the ground as set out in the complaint.

3. The opponent resists the complaint and the reply is on the record. It is the case of the opponent that the complaint is misconceived in law as the opponent is not a public authority within the meaning of R.T.I. Act, 2005 being the society registered under the Societies Registration Act, 1860. That the complaint is not tenable in law as the opponent is neither a body owned, controlled or substantially financed or non - Government Organization substantially financed directly or indirectly by the appropriate Government. That the Sports Authority of Goa and All India Chess Federation are necessary parties to these proceedings and therefore this complaint deserves to be rejected in limine. On merits it is the case of the opponent that the Goa Chess Association is the association registered under the Societies Registration Act, 1860 under registration No.39/78 with the District Registrar of South Goa and has

renewed its registration up to 11/06/2015. That the opponent is formed with the main objective of developing the chess in Goa since its inception. It is also registered as charitable entity U/s.12 A.A. of the Income Tax Act, 1961 approval dated 18/11/2010. The Association promotes the chess under non profit motive and also with the objective of helping the people of all caste, creed and poor. That the opponent is also registered U/s.80 G of Income Tax Act, 1961 vide approval dated 18/11/2010 as a charitable entity vide order of Commissioner of Income Tax. That the opponent is affiliated with the All India Chess Federation (A.I.C.F.) and all purpose the A.I.C.F. is its parent body who ultimately monitors the chess activities in all States of India. That the entire records of registered players, national tournament, international participation are looked after by the A.I.C.F. That the opponent is also affiliated with S.A.G and receives maintenance grant of Rs.50,000/- from S.A.G. That from 2009-2010, the opponent is eligible for grant for conducting annual tournament for the specific expenses incurred, restricted to Rs.1 lac per annum on submission of bills. That the Sports Authority of Goa reimburses TA/DA directly to the players for representing Goa at national on submission of bills by the players through the opponent. That the said amount paid towards TA/DA of the players is not a grant of the opponent. That the opponent is conducting this activity to meet the objectives of the association with very meagre funds. That the opponent registered office as C/o.Janata Vachanalaya and for all purpose function from residence of Secretary. That the opponent did not have any infrastructure like office place, officers or any paid staff to look after affairs of the Association and this is mainly because of the financial structure of the association and that there is no office timing etc. due to non availability of office place and staff to look after. That the elected executive members hold honorary post and not full time employee or officers of the opponent and they are not entitled for any remuneration. That the association is managed by 17 members of the Executive Committee elected by the members of the General Body. That the accumulated fund of Association as on 31/3/2010 is Rs.1,62,374 and has also borrowed money from the office bearers/members amounting to Rs.1,10,984 to carry on the activities of the association. It is the case of the opponent that the Sports Authority of Goa notified guidelines pertaining to R.T.I. Act through Government Gazette indicating that all the Sport Organization recognized by Sports Authority of Goa shall be covered under the provisions of R.T.I. Act are patently illegal as no such

guidelines are permitted to widen the meaning of public authority or definition 2 (h) of the said Act. That the said actual guidelines without any enabling provision in the said act or by a competent person and hence invalid and not binding. That the guidelines cannot substitute a notification and has no force of law even though published in gazette. That the Sports Authority of Goa while publishing said guidelines has ignored the basic requirement of describing any organization as public authority defined U/s.2(h) (d) (ii). That as per the same any organization shall become public authority by notification issued or order made by the Government. That they have also ignored basic things that to be held as public authority, any Non Government Organization is required to be substantially financed by the Government. That the plain reading of the said guidelines of the SAG, it appears that the same are published by the SAG to educate the various sports associations and clubs about R.T.I. and requesting them to maintain the records which may be required by the S.A.G. if requisitioned by any applicant from SAG. That the opponent also refers to the notification No.36-2/2010-SP II dated 30<sup>th</sup> March, 2010 issued by the Govt. of India or Ministry of Youth Affairs and Sports under the directions of the Central Information Commission. That the said notification declares the various National Sports and Public Authority, however, by the said notifications, only Sports Federations are brought under the purview of R.T.I. Act 2005 which receive a minimum grant of Rs.10 lakhs to become public Authority under section 2 (h). That the opponent is presently receiving annual maintenance grant of Rs.50,000/- which has been revised two years back from Rs.30,000/- which are released only after the submissions of the audited expenses accounts of the association. That considering the said notification of Government their association does not become the Public Authority as notification of Central Government overrides the guidelines issued by the SAG and so also the grants received from the SAG is well below Rs.10 lakhs. That the Association brought this fact to the notice of SAG vide email dated 10/11/2010 addressed to the Director of SAG asking them to clarify the status of the opponent Association based on the notification from Central Govt. That on receipts of notice from the Commission the opponent once again reminded SAG to respond to email dated 28/4/2011. That opponent also intimated the Complainant about the same seeking such clarifications from SAG does not imply that the opponents accept that they are covered by R.T.I. Act. That information collected by the complainant from the SAG about grants given to

association, shows that the same is not exceeding Rs.10 lakhs. That the opponent also relies on the order of C.I.C. dated 28/5/2007. That the complaint is barred by limitation as the same should have been made within 30 days from the receipt of the letter of opponent dated 9/12/2010 as the complaint is presented on 4/2/2011. It is further the case of the opponent that if opponent is held as "Public Authority" it will cause lot of hardship in following the rules and regulations under R.T.I. without having provision of manpower, infrastructure and financial support from SAG and it will not be in the spirit of statute considering the quantum of Government grants which cannot be held as substantial funding to the opponent. According to the opponent the complaint is liable to be dismissed.

4. Heard the arguments. Shri V. A. Kamat representative of the Complainant argued on behalf of the complainant and the learned Adv. Shri U. Shetye argued on behalf of the opponent. According to the representative of the complainant this Commission has already decided on the basis of Government notification. He also referred to the facts of the case about receiving of grants etc. He also referred to the documents on record.

During the course of his arguments, Adv. for the opponent submitted that they are a society and referred to the documents on record. Being a society they are not a public authority. He referred to Sec.2(h), about 'substantially financed' grants, T.A., D.A. paid etc in detail. He also referred to various annexure circulars on record. He next submitted that they are not receiving grants. He also referred to Annexure IV produced by Complainant. He also referred to guidelines and submitted that guidelines do not bring the opponent within the purview of R.T.I. Act. In short according to him they are not a public authority. Since opponent is not a public Authority complaint is not maintainable.

In reply Shri Kamat submitted about non-government organizations which receive substantial finance. He next referred to the grants of Rs.4 lakhs, T.A., D.A. payments. According to him they are Public Authority.

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?

6. It is seen that the complainant, vide application dated 25/10/2010 sought certain information from the opponent. In all about three applications seeking information were filed. By letter dated 09/12/2010, the Hon. Secretary informed the complainant that the Goa Chess Association has not appointed any Public Information Officer till date. It was also informed that regarding R.T.I. they have written to Sports Authority of Goa for their advice whether Association comes under the purview of R.T.I. Act, 2005 and that they will inform the complainant accordingly on receipt of guidance from Sports Authority of Goa. It appears that on 28/09/2010 the complainant had filed an application under R.T.I. seeking information and by letter dated 09/10/2010 the Hon. Secretary informed the complainant that application was received on 30/09/2010 and that the court fee stamp affixed was insufficient. In any case it appears that information is not furnished.

7. According to the complainant, Goa Chess Association is covered by R.T.I. and a Public Authority. This is disputed by Advocate for the opponent. According to him, the Goa Chess Association is not covered by the R.T.I. Act and it is a society registered under Society's Act and secondly they are not financed by Government.

8. The R.T.I. Act defines the 'Public Authority' under Sec.2(h) as any authority or body or institution of self Government established or constituted –

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government;

And includes any

- (i) body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government.
- (ii) Non Government Organisation substantially financed directly or indirectly by funds as provided by the appropriate Government.

It is seen that the concept of Public Authority has been given very wide definition under the R.T.I. Act. The definition covers all the area of

Government including the Legislature, Executive and the Judiciary. The organizations established by any law of Parliament or State Legislature are also 'public authorities' for the purpose of the Act. The Psus and the organizations that substantially financed, directly or indirectly by the Government are also included. In short R.T.I. Act is applicable to institutions or non-Government organizations if any one of the condition mentioned in Sec 2(h) are satisfied to bring them under the definition of 'Public Authority'.

9. Now it is to be seen whether the opponent herein satisfies any one of the Criteria mentioned under sec 2(h) of the R.T.I. Act. Admittedly they are not covered under any of the four categories mentioned in the main definition of "Public Authority". It would not be out of place to consider the other criteria mentioned under the inclusive definition of 'Public Authority' that is whether controlled or non-governmental organization substantially financed directly or indirectly by funds provided by appropriate Government.

It is to be noted here that the word "includes" is generally understood in statutory interpretation as enlarging the meaning of the word or phrases in the body of the statute.

According to Shri V. A. Kamat, representative of the Complainant, it is a State Sport Association and covered by notification dated 08/07/2010. Secondly Goa Chess Association receives grants from Government. He also referred to T.A., D.A. etc. This is disputed by Adv. Shri U. Shetye for opponent. According to him it is not substantially financed by Government and he also attacked the said notification on various grounds. It is seen that by letter dated 09/12/2010 (Annexure 2) the opponent sought advice from Sports Authority of Goa whether their association comes under the purview of R.T.I. Act. Annexure C3 is the letter from opponent to the Complainant about insufficient stamp. Annexure C4 are the guidelines dated 14/05/2010. The same is addressed to all the State Sports Association. The same speaks of 'recognition granted' and further states "..... .it is hereby enjoined upon all the Sports Organizations (Sports Club/State Sports Association) recognized by the Sports Authority of Goa that these Sports Clubs and State Sports Associations shall be covered under the provisions of R.T.I. Act 2005 with immediate effect. The said guidelines are published in the

official gazette Govt. of Goa (Annexure C-5). This Gazette is dated 08/07/2010. This Gazette makes it crystal clear that all the Sports Organizations (Sports Clubs/State Sports Association) recognized by S.A.G. shall be covered under the provisions of R.T.I. Act. It appears the same was not challenged. I have also perused the documents relied by the opponent Annexure A-1 is the certificate. The same shows that the Goa Chess Association is registered under societies Registration Act, 1860; Annexure A-2 is income tax certificate U/s.12AA(1) (b) of Income Tax Act, 1961. I have perused the said certificate; Annexure A-3 is the order under Sec 80 G (5) of the Income Tax Act; Annexure A-4 is the Auditors Report. The same speaks of Annual Grant Receivable for Rs.70,000/- and National Participation grants; Annexure A-5, the same is declaring National Sports Federations as Public Authority. I have carefully perused the same. I have also perused the Annexure A-6, Annexure A-7 (decision of CIC). I have perused all the material on record.

10. The next aspect is about funding/financing. I need not refer to this in detail. It is an admitted position that some grants/finance is given to the Chess Association. According to the Advocate for the opponent, it is not substantial finance. Whereas as representative of the complainant states that grants are to the tune of Rs.4 lakhs and besides T.A. and D.A. The main thrust of the argument of the advocate for opponent is that Goa Chess Association is not a public authority and as such they are not obliged to furnish information. It is interesting to note that the object of the R.T.I. Act is to ensure greater and more effective access to information under the control of Public Authorities, in order to promote transparency and accountability in the working of every Public Authority. The basic postulates of accountability is that people should have information and the citizens should know the fact, true facts. It is said that the key to the opening of every law is the reason and spirit of law - the intention of law maker/animus imponentis. The provisions of R.T.I. Act have to be interpreted keeping in view the statement of objects and reasons, the title and preamble of the Act.

Now it is to be seen whether Goa Chess Association is Public Authority?

It is to be noted here that Goa Chess Association is neither established nor constituted by or under the constitution, or any other law made by parliament or any other law made by State Legislature Goa



Chess Association has also not been established or constituted by notification issued or order made by appropriate Government. Again it is not owned by appropriate government. The only thing to be seen is about “control” and “directly and indirectly funding”. According to Advocate for the opponent even these clauses are not at all attracted.

I have perused some of the rulings on the point such as (i) M.P. Varghese, etc V/s. Mahatma Gandhi University & Others AIR 2007 Kerala 230; (ii) W.P. (C)No.876/2007 Indian Olympic Association V/s.Veeresh Malik & others ; (iii) W.P. (C) 1212/2007 Sanskriti School V/s. Central Information Commission and (iv) W.P. (C) No.11611/2008 Organizing Committee Common Wealth Games 2010 Delhi V/s. Union of India. It was observed that what amounts to substantial financing cannot be straight jacketed into rigid formulae of universal application of necessity. Each case would have to be examined on its own facts. That the percentage of funding is not ‘majority’ financing, or that the body is an impermanent one are not material. Equally, that the institution or organization is not controlled and is autonomous is irrelevant and indeed the concept of non-government control in its establishment or management. That the organization does not perform or predominantly perform “public” duties too, may not be material as long as the object for funding is achieving a felt need of a section of the public or to secure larger societal goals.

In Dara Singh Girls High School, Gaziabad V/s. State of U.P. & Others 2008 (2) ID 179 (Allahabad H.C.) it is observed that whenever there is even an iota of nexus regarding control and finance of Public Authority over the activity of the a private body or institution or an organization, etc. The same would fall under the provisions of Sec 2(h) of the Act. It was also observed that the provisions of the Act have to be read in consonance and in harmony with its objects and reasons given in the Act which have to be given widest meaning. (The relevant observations are in para 13, 14 and 15).

In short some sort of assistance and control is sufficient for coming within the purview of Sec.2(h) of R.T.I. Act. Under R.T.I. lesser degree of control would suffice. Even if control is regulatory it will attract clause (d) (i) of 2(h).

11. Apart from all this, the important piece of evidence as far as this Commission is concerned is the official gazette Government of Goa dated 8/7/2010 and letter dated 14/05/2010 addressed to the President/Secretary All the State Sports Association.

The Gazette Government of Goa clearly mentions “All the Sports Organisations (Sport Clubs/State Sport Associations) recognized by the Sports Authority of Goa shall be covered under the provisions of R.T.I. Act 2005 with immediate effect.”

Advocate for the opponent attacked the guidelines and this piece of evidence on all fours. In the reply filed also there is mention of this particularly in para 14 to 17 of the reply. According to advocate for opponent these are merely guidelines.

It is pertinent to note here that State Government is vested with powers to make rules to carry out the provisions of the Act in terms of Sec.27 of the R.T.I. Act. The rules etc made by State Government are to be notified in the official gazette. These guidelines are binding on this Commission and are duly published in the official Gazette. Adv. for the opponent submitted that they are not properly made and the said guidelines do not bring the opponent within the purview of R.T.I. Act. Assuming it is so, this Commission cannot declare the same as ultra vires as the commission has no such power. This Commission is not a Court of plenary jurisdiction but exercises limited jurisdiction conferred by the R.T.I. Act 2005.

Again it is to be noted here that the opponent has not challenged the said guidelines in the Gazette. Good or bad the same stands unless declared otherwise.

12. In view of all the above and more particularly the guidelines in the Government Gazette, I hold that Goa Chess Association is a public authority within the meaning of Sec 2(h) of R.T.I. Act 2005. Consequently the R.T.I. Act is applicable to Goa Chess Association. Hence, I pass the following order.

**ORDER**

The complaint is allowed. The Opponent to take steps to appoint Public Information Officer within 30 days from the receipt of the order.

On appointment of P.I.O., the P.I.O. to deal with the application/applications of the Complainant having regard to the time frame as prescribed by R.T.I. Act. Prayers (iii) and (iv) are premature and cannot be granted.

The complaint is accordingly disposed off.

Pronounced in the Commission on this 22<sup>nd</sup> day of November, 2011.

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