

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.21/SIC/2011

Mrs. Joan Mascarenhas E D'Souza,
R/o.H. No.315/4. Trova Vaddo,
Sodiem, Siolim - Goa ... Complainant

V/s

1) The Public Information Officer/Headmaster
Sacred Heart Primary School,
Anjuna, Bardez-Goa
2) The F.A.A. Director of Education,
Directorate of Education,
Panaji-Goa ... Respondent

Complainant present.
Opponent No.1 present.
Opponent No.2 absent.
Adv. Smt. H. Naik for opponent No.1 present.

ORDER
(25/10/2011)

1. The Complainant, Smt. Joana Mascarenhas E D'Souza,, has filed the present complaint praying that a thorough inquiry be conducted in order to ascertain that the information which the P.I.O./Opponent No.1 has refused to furnish in a malafide manner; that the documents and records may be called for from the P.I.O. for the purpose of enquiring into the complaint and passing order U/sec.20 for flagrant violation of Sec.7(1) and 7(6) of the Act in disposal of request and penalty be imposed; that responsibility for misplacing the records be fixed; that disciplinary action be taken and other reliefs.

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

That the complainant filed a First Information Appeal dated 20/9/2010 before the First Appellate Authority/Opponent No.2 against the opponent No.1, P.I.O. That the opponent No.2/F.A.A. after hearing the complainant and opponent No.1 was pleased to pass the order dated 10/11/2010 in First Appeal directing the opponent No.1 to supply the

sought information immediately to the complainant. That the opponent No.1 furnished incomplete information. That in respect of Sr. No.5 and 6 records are not found is not acceptable. That information at Sr No.1, 2, 3 and 4 is furnished however copies are not certified under R.T.I. Act. Being aggrieved the complainant has filed the present complaint on various grounds as set out in the complaint.

3. The opponent No.1 resists the complaint and the reply is on record. That no second appeal has been filed by the complainant. That the entire information available in the office of opponent No.1 has been furnished to the Complainant free of charge. That the information sought pertains to third party but in good faith information has been furnished to the complainant. On merits it is the case of the opponent No.1 that full available information is furnished. That the opponent No.1 has fully complied with the order of the opponent No.2. That the complainant has admitted that she is neither interested in receiving information nor the compensation. That the opponent No.2 has rightly passed the order dated 10-11-2010 stating that the P.I.O. has supplied the information sought immediately free of cost and therefore nothing sustains in the present complaint. According to the opponent No.1 the complaint is liable to be dismissed.

4. Heard the arguments. The complainant advanced arguments and also filed written arguments which are on record. Adv. Smt. H. Naik argued on behalf of the opponent No.1.

Adv. for opponent No.1 submitted that reply is dated 18/4/2011. She next submitted that no second Appeal lies. That the information is furnished in toto. According to the advocate for opponent No.1 the information is provided in good faith though P.I.O. was not bound to provide and it is to be seen whether the same is rightly provided.

In reply the complainant submitted that application was to Director of Education. That First Appellate Authority did not send any notice within 45 days. Thereafter notice was issued. According to her they have the information. That the F.A.A. did not allow to see the information and hence appeal was filed. She next submitted that third party procedure is to be followed. That the information sought is not for

personal interest but for public interest. That the same is sought after the selection process is over. She next submitted that copies are not certified.

According to her F.A.A. did not respond within 45 days

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 12/7/2010 the complainant sought certain information from the P.I.O. Directorate of Education, Panaji-Goa. By letter dated 29/7/2010, the Dy. Director of Education transferred the said application U/sec 8(3) of the R.T.I. Act to the Dy. Director of Education, North Education Zone, Mapusa, Goa, forwarded the same to the Head-Master (P.I.O.) i.e. the opponent No.1. By letter dated 22/9/2010 the information was furnished. That on 30/9/2010 the complainant herein preferred the appeal before the First Appellate Authority which was disposed off by order dated 10/11/2010. The F.A.A. ordered as under :-

“ The appeal is allowed. P.I.O. was told to give the appellant the information asked for immediately, free of cost. The P.I.O. supplied the sought information immediately to the appellant. I, therefore, pass the following order :-

In view of above nothing sustains in the appeal and hence the appeal is disposed off”

It appears that being not satisfied with the information the complainant filed an appeal dated 29/11/2010. It appears from the record that the same was not heard by F.A.A./opponent No.2. However the Additional documents produced by the Complainant shows that notice was issued only on 4/3/2011 stating that hearing was on 24/3/2011 at 3.30 p.m. Thereafter the same was fixed on 18/5/2011. By order dated 18/5/2011, the appeal was dismissed.

6. It is pertinent to note here that R.T.I. Act in general is the time bound programme between the administration and citizen requesting information and every step will have to be completed within the time for

presentation of request and disposal of the same, presentation of First Appeal and disposal of the same by the Appellate Authority.

Coming to the case at hand it appears First Appeal as mentioned above is disposed late and that too without giving reason for delay. Under R.T.I. Appellate Authority is not covered by Penal provision. In any case, First Appellate Authority to see that time schedule is maintained in future while disposing the appeal.

7. Coming to the aspect of information. It appears that information is furnished. According to the Complainant incomplete information is furnished and that 5, 6, 7 and 8 is not furnished. As per reply 5 and 6 is not available. 7 and 8 are dependent on 5 and 6. It appears the same pertains to the year 1988. Normally the records are to be maintained properly by the Authorities. However under R.T.I. if the records are not available there is no obligation to disclose the same. Again the same pertains to the year 1988.

The rule of law now crystalised by the various rulings of Central Information Commission is that information/document that is not available cannot be supplied. The Right to Information Act can be invoked only for access of permissible information. In any case opponents to take search properly and see that the same is traced and if traced be furnished.

Another contention of the complainant is that the information/documents furnished are not properly certified. I do agree that the documents are to be certified P.I.O. to see that the documents furnished are duly certified.

8. Next argument of the complainant is that there is delay. In the instant case there is delay from the very start. It is seen from record that the application is dated 12/7/2010. The same was received in the office on 12/7/2010 as can be seen from endorsement. The same was transferred under sec.6(3) of R.T.I. Act on 29/7/2010. The Dy. Director of Education, North Educational Zone transferred the same by letter dated 4/8/2010. Normally the application ought to have transferred within 5 days. It is seen from the records the information is furnished by letter dated 22/9/2010.

Admittedly there is delay in furnishing information. Delays have dangerous ends. Public Authorities must ponder over the fact that non-

furnishing of information lands a citizen before F.A.A. and also this Commission resulting into unnecessary harassment of a common man. However in the instant case it is contended that P.I.O./Opponent No.1 is retiring by the end of this month. In view of this, I am inclined to condone the delay. Besides information is furnished free of cost.

9. In view of all this the P.I.O. (who is taking charge after Opponent No.1) to see that the documents are properly certified under the Act. And to take a thorough search to see the documents under Sr. No.5 and 6 are found and if found be furnished. Hence I pass the following order.

ORDER

The complaint is partly allowed. P.I.O. is hereby directed to certify the said documents and furnish the same to the Complainant. The Complainant on her part to present the said documents and get the same certified. This is to be done within 15 days from the date of receipt of the order.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 25th day of October, 2011.

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