

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Comp. No.47/SIC/2011

Mrs. Natividade Almeida e D'Mello,
C/o Olinda Almeida,
H.No.41, Fotto Vaddo,
Nerul, Bardez-Goa

...Complainant

V/s

PIO/Secretary,
Goa Board of Secondary &
Higher Secondary Education,
Alto Betim-Goa.

....Opponent

Complainant in person along with Adv. A Kalangutkar
Opponent present

**ORDER
(24/10/2011)**

1. The Complainant Smt . Natividade Almeida e D'mello, has filed the present complaint praying that the Opponent be directed to furnish the information so requested within a period of one week and that the opponent be penalized as per the law for the default and/or omission in performing his statutory duties.

2. The case of the Complainant, in a nut shell is as under:

That the complainant, vide application dated 28/01/2011, sought certain information under Right to information Act, 2005 (R.T.I. Act for short) from the Public information Officer(P.I.O.)/ Opponent. That the opponent failed to furnish the information and vide letter dated 21/2/2011, the Opponent refused to furnish the information sought for by the Complainant vide application dated 28/01/2011, on the basis that the said Mr. Felicio Lazar D'Mello had objected to give the information asked for by the Complainant saying that she is his wife and she is aware of all the information which was sought by her in her application dated 28/01/2011. That the ground made out is incorrect, baseless, vague contrary to law and amounts to gross violation and breach of the statutory and legal obligation cast upon the Opponent. That the opponent has failed to show sufficient and good reasons for refusing the information sought. Hence the present complaint.

3. It is the case of the Opponent, as set out in the reply, that the Complainant had applied for information and that the said information was denied as it pertains to a party who had objected for the said

disclosure. It is further the case of the opponent that the complainant has directly come to the Commission without exhausting the remedy available with First Appellate authority. According to the opponent the complaint be dismissed by directing the complainant to exhaust the remedy legally prescribed to approach to the First Appellate Authority.

4. Heard Adv. C. Branganza and perused the records.

It is seen that by application dated 28/01/2011, the Complainant sought certain information. By reply dated 21/2/2011, the Opponent P.I.O. informed the Complainant that Shri Felicio Lazer D'Mello has an objection to give the information saying that applicant /Complainant is his wife and she is aware of all the information which she has sought.

Being aggrieved the complainant has filed the present Complainant.

5. The Opponent objects the filing of complaint without filing the Appeal with the First Appellate Authority.

Now it is to be seen whether the Complaint is maintainable . 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 requested to pay an amount of fee of which is unreasonable.

(f) The Complainant believes that he has been given incomplete, misleading or false information; and .

In respect of any other matter relating, requesting or obtaining access to the records under the Act.

The complaint can also be filed in case the Public Information Officers does not respond within the time limit specified under the Act.

In the case before me the application has been dealt with though information is not furnished. In any case the remedy lies of First Appeal.

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

(i) In a case (Appeal no.ICPB/A-16/CIC/2006 dated 13/04/3006), 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.

(ii) In Virendra Kumar Gupta V/s. Delhi Transport Corporation (F.No. CICi/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 petition is about the quality and the extent of information furnished . Such matters are appropriately the subject matter of the First Appeal under section 19(1) and should be first taken up with 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, the 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/Complainant.”

(iii) In Reserve Bank of India V/s. Shri Rui Ferreira and others (writ petition No.132 of 2011 with writ petition No.307 of 2011) Hon'ble High Court of Bombay Goa Bench has taken similar view.

6. In view of all the above the Complainant ought to have filed the first appeal and not the complainant directly to the Commission. In my view the Complainant should approach the First Appellate Authority. Since complaint was filed in time, First Appellate Authority to consider this aspect in so far as delay is concerned and the same be condoned, if any, in view of this peculiar facts.

7. In view of the above, I pass the following order:-

ORDER

The Complainant to file the Appeal before the First Appellate Authority and the First Appellate Authority to hear the same and dispose the same within the time frame as prescribed by R.T.I. Act.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 24th day of October , 2011.

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