

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.282/SIC/2010

Shri Kashinath Shetye,
R/o Bambino Building,
Alto Fondvem, Ribandar,
Tiswadi – Goa.

... Complainant

V/s

The Public Information Officer,
District and Session Court,
South Goa, Margao-Goa

... Opponent

Complainant in person.

Opponent absent

Adv. K. L. Bhagat for opponent

ORDER
(22/12/2011)

1. The Complainant, Shri Kashinath Shetye, has filed the present complaint praying that the information as requested by the appellant be furnished to him correctly free of cost as per Sec.7(6); that penalty be imposed on the Public Information Officer as per law for denying information to the complainant; that compensation be granted as for the detriment faced by the appellant for not getting the information and also for harassment caused for making him run from pillar to post and that quashing of form 'A' and applicant can comply with his name and address and information required without any other information as per section 6(2) of the Right to Information Act, 2005 and also quashing Rules made by the Hon'ble Chief Justice of Bombay High Court which overwrite the Right to Information Act, 2005.

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

That the complainant had filed an application dated 26/2/2010 and letter No.GSIDC/76(A) Part V/6363 dated 04/03/2010 under Right to Information Act, 2005 ('RTI' act for short) thereby requesting Public Information Officer(P.I.O.), Department of Information Technology to issue information specified therein. That the P.I.O./Opponent failed to furnish the required information as per the application and further instructed the appellant to submit form A which was not enclosed with the letter. That considering said non action on behalf of the opponent and being aggrieved with the said order, 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. In short, it is the case of the opponent that the present complaint does not fall within the ambit of section 18 of the R.T.I. Act and hence ought to be dismissed in limine: That the present complaint is premature as the complainant has not taken recourse of approaching First Appellate Authority and on this ground also complaint needs to be dismissed. That there is no refusal of information on the part of the opponent. That the present case also does not fall within the ambit of transfer U/s.6(3) as the complainant cannot make an application to the P.I.O. of one department and request him to furnish the information pertaining to information or documents of other Government Departments. That from the contents of the application dated 26/02/2010, it is revealed that the complainant had sought the information of other Government Department. Only in respect of item No.3 mentioned in the said application. That from the said item No.3, it is amply clear that the complainant was aware that the said information was not available with the Public Information Officer of Department of Information Technology. That the complainant filed fresh and specific application to the opponent seeking the information. That it is not proper to file application to the P.I.O. of one department making request therein to him to obtain the information from other Government Department and/or to transfer it to all other

department as there are guidelines in this regard issued by the Information Department which are to be adhered to by all the departments. On merits it is the case of the opponent that the complainant vide his application dated 26/2/2010 addressed to the Public Information Officer, G.S.I.D.C. Panaji, Goa sought certain information as mentioned therein. That the complainant had sought information in respect of item No.1, 2, 4, 5, 6 and 7 of G.S.I.D.C. Panaji. Only information at item No.3, the complainant has sought information of G.S.I.D.C. Panaji and other Government Department. Accordingly the P.I.O. G.S.I.D.C. vide his letter dated 4/3/2010 transferred the said application under the provision of Section 6(3) (ii) of the R.T.I. Act to the opponent herein. That vide letter dated 05/03/2010, the opponent informed the complainant that his application dated 04/03/2010 being not in form 'A' and that the same was not attached with self address envelop bearing postal stamp etc. as required under Rule 4 of the Goa, Daman, Diu and Dadra Nagar Haveli District Court, R.T.I. Rules, 2009 published in the official gazette dated 17/9/2009 series I No.25, no information sought by him could be furnished to him and he was further informed to seek the information as per the requirement of Rule 4 of the said rules if required within 3 days from the receipt of said letter. That further, the complainant has failed and/or neglected to submit his fresh application and therefore no information could be furnished to the complainant. That the P.I.O. has to adhere to said Rules and hence could not entertain said application of the complainant and that in the circumstances the information could not be furnished to the complainant which the complainant himself is responsible and at fault. That the opponent within period of 30 days of receipt of said letter of the G.S.I.D.C. , Panaji sent the said letter to the complainant. That the opponent also denies the grounds set out in the complaint. According to the opponent, complaint is liable to be dismissed.

4. Heard the argument. The complainant argued in person and Adv. K. L. Bhagat argued on behalf of the opponent.

5. I have carefully gone through the records of the case and also considered 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 his application dated 26/02/2010 sought certain information from the P.I.O., G.S.I.D.C. The information was in relation to the circular of the Chief Secretary under No.3/5/2009/ARD dated 9/6/2009. It appears from the record that by letter dated 04/03/2010, the P.I.O. G.S.I.D.C. transferred the said application to the opponent herein. By letter dated 05/03/2010, the P.I.O./Opponent informed the complainant that the application was received from the P.I.O./G.S.I.D.C. However the same is not in Form A and there is no self addressed envelope bearing postal stamp equivalent to the rate prescribed for registered post with Acknowledgement Due along with the application as required under Rule 4 of the Goa, Daman, Diu and Dadra Nagar Haveli District Court, R.T.I. Rules, 2009 published in official gazette dated 17/9/2009 series I No.25. It was also informed to the complainant that he can seek information as per the requirements of Rule 4 if required within three days from the receipt of the letter. It appears that the complainant has not filed an application as per the said rules instead preferred the present complaint.

6. It is seen that under Right to Information Act as per Section 2(e), Chief Justice of High Court is a competent authority. U/s.28 of the R.T.I. Act, the competent authority may by notification in the official gazette make Rules to carry out provisions of this Act. This commission also has decided similar issue earlier. Since the rules are framed by the competent authority the same are to be followed. This Commission has no power to declare the same as ultra virus as contended by the complainant. In any case the complainant will have to follow the procedure prescribed so as to obtain the information.

7. It was contended by the advocate for the opponent that the complaint is not maintainable. It is to be noted here that information was sought from P.I.O. G.S.I.D.C., Panaji. He transferred the request in respect of item No.3 to the opponent and by letter dated 5/3/2010 informed the complainant to file the same in proper proforma. In the factual backdrop of this case the present complaint is not maintainable. The complainant has to prefer the appeal before First Appellate Authority(FAA). In any case the complainant cannot skip the first appellate forum. Sec.18 can not be used as substitute for Sec.19 of the R.T.I. Act. The complainant to take note of the same in future.

Relying on certain guidelines (which are on record) Advocate Shri Bhagat submitted that application should have been filed before the opponent directly instead of transferring U/s.6(3) of the R.T.I. Act. According to him, Sec.6(3) is not at all attracted.

8. It is to be noted here that as per Sub Section(1) of Sec.6 expressly requires that the person who desires to obtain information under the Act shall make a request along with the prescribed fee to the P.I.O. 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.

9. The information sought is in respect of circular to Chief Secretary No.3/5/2005 dated 9/6/2009. I have perused the said circular, xerox copy of which is on record. The same aims at instituting a sense of responsibility as well as discipline in Government servants/employees and thereby avoiding of delays. Besides accountability also can be fixed. In my view there should be no objection in following the same. The opponent also should follow the said circular of the Chief Secretary, if they are not following the same by now.

10. Coming to the prayer 4 reference to the aspect of quashing of Form "A" this Commission has also decided in an earlier case that this prayer cannot be granted by this Commission. To my mind the complainant can file an application to the opponent as per their rules and opponent to consider the same and furnish the information in terms of R.T.I. Act. In view of all the above, I pass the following order.:-

ORDER

The Complaint is partly allowed and the complainant to file application before the opponent in proper form and the opponent to deal with the same and furnish the information within 30 days from the receipt of the application. The inspection, if any, could be given on a mutually agreed date.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 22nd day of December, 2011.

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