

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.281/SIC/2010

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

... Complainant

V/s

The Public Information Officer,
Administrative Reforms Department,
Secretariat, Porvorim-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 complainant be furnished to him correctly free of cost as per Sec.7(6); that penalty be imposed on the Public Information Officer (P.I.O.) as per law for denying the information to the complainant; that compensation be granted and that inspection of documents may be allowed as per rules.

2. It is the case of the complainant that vide an application dated 26/2/2010, the complainant sought certain information under Right to Information Act, 2005 ('RTI' act for short) from the Public Information Officer(P.I.O.) G.S.I.D.C. which was transferred as per section 6(3) of the R.T.I. Act to the opponent That the opponent/P.I.O. failed to furnish the required information as per the application of the complainant which was returned back to the complainant. That considering said non action on behalf of the

opponent and being aggrieved the complainant has filed the present complaint on various grounds as set out in the complaint.

3. The case of the opponent is fully set out in the reply which is on record. 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 complaint needs to be dismissed. That the present case also does not fall within the ambit of transfer U/sec 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 the complainant ought to have filed fresh and specific application to this P.I.O. seeking the information of item No.3. That the transfer of application to another P.I.O. U/sec.6(3) is only when the applicant makes a mistake or under bonafide belief that information is available with the Public Authority and not when the applicant deliberately asks to obtain the information from other department. 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 all other Government Department and/or to transfer it to all other Govt. 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 application dated 26/2/2010 addressed to the Goa State Infrastructure Development Corporation Ltd. Panaji, Goa sought certain information as set out in the application. 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 and only information at item No.3, the complainant has sought information of Department 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 request of said item No.3 under the provision of Section 6(3) (ii) of the R.T.I. Act to the opponent herein.

That by letter dated 08/03/2010, this opponent returned the said letter. That the opponent did not refuse any information. That within 30 days the opponent sent letters (reply to the P.I.O.s I.D.C.) under intimation to the complainant. That the ground raised by the complainant are irrelevant and transfer request was improper. 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 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 26/02/2010 the complainant sought certain information from the P.I.O., G.S.I.D.C. It appears that P.I.O. G.S.I.D.C. transferred the request to the opponent herein U/s.6(3) of the R.T.I. Act on 4/3/2010. By letter dated 08/03/2010, the P.I.O./Opponent informed the P.I.O./G.S.I.D.C. that details are sought from their department and as such to furnish the same. The copy of this reply was endorsed to the complainant. Being aggrieved the complainant preferred the present complaint.

6. Now it is to be seen whether complaint is maintainable. It is to be noted that information was sought from P.I.O. G.S.I.D.C., Panaji-Goa. He transferred the request in respect of item No.3 to opponent who by letter dated 8/3/2012 informed the P.I.O. G.S.I.D.C., that such transfer is not contemplated as information was sought from their office. Therefore in my view complaint as such is not maintainable. Instead the Complainant ought to have preferred First Appeal. I do agree with the advocate Shri Bhagat for opponent on this count. The complainant cannot skip first Appellate Forum. Besides Sec.18 cannot be used as a substitute for Sec.19 of the R.T.I. Act.

The complainant to take note of the same in future.

7. Advocate Shri Bhagat relying on certain guidelines (which are on record) 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.

Sec.6 reads as under :-

“6.Request for obtaining information.

1. Any person who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made accompanying such fee as may be prescribed to,

a)

b)

Specifying the particulars of the information sought by him or her,

Provided that

.....

2.

3. Where an application is made to a Public Authority requesting an information, --

(i) Which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority

The public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer;

Provided that the transfer of an application pursuant to this subsection shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

8. 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 the concerned Department.

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

(i) In A Gangopadhyaya V/s South East Central Railway, Raipur (Appln. No.CIC/OK/A/2006/00453 dated 02/01/2007) where appellant asked for 20 items of information each of which related to a different department/activity and the appellant was asked to put in separate applications for each of the items of information, the respondent's reply was upheld by the Commission.

(ii) Veeresh Malik V/s Ministry of Petroleum Natural Gas New Delhi (case No. 261/IC/(A)2006 F Nos CIC/MA/A/2006/00580 dated 11/09/2006) where appellant submitted applications to the Ministry of Petroleum and Natural Gas and expect transfer of the same under section 6(3) to the concerned oil companies, the C.I.C. held it is not understandable why applicant expects to transfer the

same to oil Companies when oil Companies themselves are public authorities under the Act.

(iii) In Abid Ulla Khan V/s Northern Railway (case No. 1320/IC/(A)/2007 dated 10/10/2007) it is observed that Appellant was well aware about the availability of information in the office of the CPIO in Lucknow, yet he chose to file his application to the Delhi Office, which has resulted in loss of time. It is further observed that information seeker should apply for information to the CPIO, who may be in possession of the requisite information.

10. The information sought is in respect of circular to Chief Secretary No.3/5/2009-A.R.D. dated 9/6/2009.

I have perused the said circular i.e. xerox copy which is on record. The same aims at instituting a sense of responsibility as well as discipline among 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.

11. Coming to the aspect of furnishing information. It is seen the application was made to P.I.O. G.S.I.D.C. The same was transferred to the opponent herein who by letter dated 08/03/2010 sent back to the P.I.O. G.S.I.D.C. Therefore, the application is not before opponent. Besides, P.I.O. G.S.I.D.C. is not a party to present complaint. Hence it would not be proper to direct the P.I.O. G.S.I.D.C. In any case the complainant to file fresh application or copy of the said original application before the opponent and the opponent to furnish the information within 30 days of the receipt of the application on payment of prescribed fees.

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

ORDER

The Complaint is allowed. The complainant to file fresh application and/or copy of the said application dated 26/02/2010 to the opponent and the opponent to furnish the information as stated in the application within 30 days from the receipt of the application.

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