

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.124/SCIC/2011

Shri Laxmikant S. Kundaikar,
R/o.H. No.221/1,
Shubhankar Heritage,
Near Railway Station,
Karmali, Tiswadi - Goa

... Complainant

V/s

1. The Assistant Director of Transport (H.Q.)
Public Information Officer,
Directorate of Transport,
Junta House, Panaji-Goa
2. The Director of Transport,
First Appellate Authority,
Directorate of Transport,
Junta House, Panaji-Goa

... Opponents

Complainant absent. His Adv. Shri D. S. Shirodkar present.
Opponent absent.

ORDER
(14/12/2011)

1. The Complainant, Shri Laxmikant S. Kundaikar, has filed the present complaint praying that the Commission be pleased to inquire into the present complaint in terms of Sec.18 of the Right to Information Act, that the Public Information Officer may be directed to furnish the information sought by the complainant-applicant correctly and completely and that penalty be imposed as provided u/s.20 of the Act.

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

That the complainant, vide his application dated 19/07/2010, sought certain information under Right to Information Act ('RTI' act for short) from the Public Information Officer (P.I.O.)/Respondent No.1/opponent No.1. That the opponent No.1 denied the same on the plea that the subject matter of the complaint from Shri Bhosale was under investigation. That the complainant submits that the Dy. Director of Transport (N), Vigilance Officer of the Directorate of Transport has issued a memorandum bearing No.D.Tpt/EST/Dy.DT/2010/1911 dated

12/7/2010 to the complainant and another officer calling for their explanation regarding alleged leakage of the information from the file to which complainant and the other officer were privy. That the complainant had furnished his reply to the said memo vide letter dated 14/7/2010. That the complainant has reasons to believe that the opponent/P.I.O. knowingly gave incomplete and misleading information. Being aggrieved by the reply of the opponent No.1, the complainant preferred an appeal before the First Appellate Authority. However the F.A.A. took a long time of 9 months to dispose the appeal. Being aggrieved by the same the complainant filed the present complaint.

3. The opponents did not file any reply as such. However the opponent No.1/P.I.O. advanced arguments.

4. Heard the arguments. Ld. Adv. Shri D. S. Shirodkar argued on behalf of the complainant and the opponent/P.I.O. argued in person.

According to Adv. for the complainant there is no harm in giving information sought. He also referred to Sec.8(1)(h). He submitted that P.I.O. cannot say that information is not available. He next submitted that appeal is not disposed within time limit and decided after much delay. According to the Adv. for the complainant information sought ought to have been granted.

During the course of his arguments P.I.O. submitted that clipping is not available and regarding 3 the same cannot be granted in view of Sec.8(1)(h). He further submitted that the same is with Vigilance Department.

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 vide application dated 19/07/2010 the complainant sought certain information i.e. three items at Sr. No.1 to 3. It appears that the said letter was received on 30/7/2010 as can be seen from the application. By reply dated 27/8/2010, the P.I.O. informed the complainant that as per point No.1 there is no clipping available of Goa Doot dated 3/12/2008. Regarding point No.2 clarification was sought and regarding point No.3 it was informed that copy of the letter cannot be issued at this stage as per Sec.8 H of R.T.I. Act since complaint is under investigation. Being not satisfied the complainant preferred the

appeal before the F.A.A. However as per the complaint, appeal was not disposed. It is seen from record that by order dated 15/9/2011 the appeal was dismissed.

It is the contention of the complainant that information ought to have been furnished.

6. It is seen that point No.1 is as under :-

“1. Clipping of Goa Doot dated 3-12-2008.

The reply is as under:-

As per this office record, there is no clipping available of Goa Doot dated 03/12/2008.”

It is seen that information is not available. It is a fact that the information that is not available cannot be furnished. No doubt records are to be well maintained. In any case as the information is not available no obligation on the part of P.I.O. to disclose the same as the same cannot be furnished.

I have perused some of the rulings of the Central Information Commission on the point. The rule of law now crystallized by these rulings is that information/document that is not available cannot be supplied. The Right to Information Act can be invoked only for access to permissible information.

Point No.2 is regarding explanation of Shri A. A. Bhosale dated 10/11/2008. It was informed that further clarification in this regard is needed. This explanation figures in Memorandum dated 12/7/2010. Therefore point No.2 refers to the same. To my mind the same can be furnished. In spite of this if any clarification is required the complainant can furnish the same.

7. Regarding point No.3 it was informed that copy of the letter cannot be issued at this stage as per sec.8 H of the R.T.I. Act since the complaint is under investigation.

Sec.8(1) (h) is as under :-

“8(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,.....

(a)

(b)

- (c)
- (d)
- (e)
- (f)
- (g)
- (h) Information which would impede the process of investigation or apprehension or prosecution of offenders”.
- (i)
- (j)

There is no dispute with the proposition that investigation which would impede the process of investigation, apprehension or prosecution of offenders is to be denied or withheld. However, it is to be noted here that mere existence of an investigation process cannot be a ground for refusal of information. P.I.O. failed to show satisfactorily as to why release of such information would hamper the investigation process.

In the case before me the explanation is dated 10-11-2008. Stage of inquiry is not on record. Since much time has elapsed the said inquiry might be over. Even other wise the complainant herein is a party as per the said memorandum dated 12/7/2010. To my mind since he is a party he must know about the same. Therefore to my mind this information can very well be furnished.

During the course of argument it was submitted by P.I.O. that item No.3/point No.3 is with vigilance department. If the information regarding item No.3 is with the Vigilance Department then the request can be transferred to the said Department under Sec.6(3) of the R.T.I. Act.

8. It was contended by Adv. for the complainant that First Appellate Authority did not dispose the appeal in time.

It is seen from record that Appeal was received in the Office of First Appellate Authority on 05/10/2010. Notice of hearing was given by letter dated 20/1/2011 to remain present on 27/1/2011. The appeal was decided by order dated 15/9/2011.

It is to be noted here that R.T.I. is a time bound programme. Appeal i.e. First Appeal is to be disposed within 30 days or within 45 days but with reasons. In the case at hand, time schedule has not been followed. In any case, F.A.A. to take note of the time schedule in future.

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

ORDER

The Complaint is allowed. The opponent No.1/P.I.O. to furnish information to the complainant in respect of point at Sr. 2 and 3 of his application dated 19/7/2010 within 20 days from the date of receipt of this order.

In case the information in respect of Point No.3/Sr. No.3 is with Vigilance Department then to transfer the same U/sec.6(3) of the R.T.I. Act within 5 days from the receipt of this order.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 14th day of December, 2011.

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