

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.54/SCIC/2011

Shri Suvarn R. Bandekar,
R/o.Suvarn Bandekar Building,
P.O. Box No.11
Vasco-da-Gama, Goa

... Complainant

V/s.

1. The Executive Engineer,
Public Information Officer,
WD-IX(PHE), PWD,
Fatorda, Margao-Goa
 2. The Assistant Engineer,
Assistant Public Information Officer,
Office of the Executive Engineer,
WD-IX, (PHE), PWD,
Fatorda, Margao-Goa
- ... Opponent

Complainant absent.

Adv.Smt. A. Bhohe for complainant present.

Opponent No.1 absent.

Opponent No.2 present

Shri Pravin Dessai representative of opponent present.

ORDER
(19/01/2012)

1. The Complainant, Shri Suvarn R. Bandekar, has filed the present complaint praying that this Commission be pleased to call for the records and proceedings pertaining to the appellant's application dated 25/11/2010 on the file of the opponents and that the penalty of Rs.250/- per day be imposed on the opponents till the time the opponent furnish the complete information as sought by the complainant vide application dated 25/11/2010 inwarded in the office of the opponent on 29/11/2010 vide entry No.5571.

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

That the complainant, vide application dated 25/11/2010 sought certain information under Right to Information Act, 2005 ('R.T.I.' Act for short) from the opponent/Public Information Officer(P.I.O.). That by letter dated 05/01/2011, the opponent No.1 informed the complainant that the information sought was ready and the complainant was requested to collect the same after paying the required fee of Rs.4/-. That the complainant was handed over a document/sheet of paper saying that as per office records the concerned file was not traceable. That the complainant is aggrieved by the act of the respondents/opponents in not furnishing the information as sought by the Complainant despite the fact that opponent No.1 by letter dated 5/1/2011 had categorically stated that the information sought by the complainant was ready and the complainant should collect the same. That information furnished is incorrect, incomplete and misleading. That the act of the opponents is contrary to the provisions of the R.T.I. Act and that the opponents are liable to be directed to furnish the specific information as sought. Being aggrieved the Complainant has filed the present complaint on various grounds as set out in the complaint.

3. The opponents resist the complaint and the reply of the opponent No.2 is on record. In short it is the case of the opponent No.2 that the Complainant has asked the details about water connection given to one Mr.Armando Cardozo and Xavier Bar & Restaurant. That the information asked was pertaining to the third party in terms of Sec.11. That as they maintain total transparency in their working, when the application reached to him, he undertook thorough search in his office for the file which was opened somewhere in 1997, however, he could not locate the same. That as an additional effort, he assigned Shri Meghnath Gaonkar, Meter Reader, exclusively for the job. However, inspite of his putting best efforts, he could not locate the file which he informed by letter dated 10/01/2011. That they have put their best efforts and time to locate the file which was about 14 years old. That only after confirmation that the same is not traceable they informed the

same to the Complainant through S.P.I.O. That the complainant was required to prefer first appeal before the departmental authority instead of coming directly to this Commission. That the Complainant has ignored this express provision of the Act. According to opponent No.2 Complaint is to be dismissed.

4. Heard the arguments. The Learned Advocate Smt. A. Bhobe argued on behalf of the Complainant and the opponent No.2 argued in person.

Adv. for the complainant referred to the facts of the case in detail. According to her complainant was called to collect the information but the same was not furnished. She also submitted that application was filed on 25/11/2010 and the Complainant was called on 05/01/2011 to collect and the information furnished was not available. According to advocate for the complainant this amounts to refusal of information. She also referred to the reply about P.I.O's statement regarding 'personal score' etc.

During the course of his arguments, opponent No.2 submitted that complaint is not maintainable and that appeal ought to have been filed. He next submitted that file is old of 1997 and that they tried to search the same but the same was not available. In short according to him the documents are not traceable.

6. 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 25/11/2010, the complainant sought certain information. By letter dated 05/01/2011 the Executive Engineer requested the complainant to collect the same on payment of fees and the information was furnished as the concerned file is not traceable.

Being aggrieved the complainant filed the present complaint.

7. It is contended by the opponent that complaint is not maintainable without filing the First Appeal.

First I shall refer to this aspect i.e. whether the complaint is maintainable.

It is to be noted here that under sec.18(1) of the R.T.I. 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 and the Public Information Officer or Asst. Public Information Officer refuses to accept the application for information;
- (b) the complainant has been refused access to any information requested under the Act;
- (c) the complainant does not receive a response from the Public Information Officer within the specified time limit;
- (d) the complainant has been required to pay an amount of fee of which is unreasonable;
- (e) the complainant believe that he has been given incomplete, misleading or false information; and
- (f) in respect of any other matter relating requesting or obtaining access to the record under the Act

The complaint can also be filed in case the Public Information Officer does not respond within the time limit specified under the Act. In the case before me good or bad information has been furnished. In any case the remedy lies of first appeal.

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

In a case (Appeal No.ICPBA/A-16/CIC/2006 dated 13/4/2006) 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.

In Virendra Kumar Gupta V/s. Delhi Transport Corporation (F. No.CIC/AT/C/2007/100372 dated 22/2/2008) it was observed as under :-

“Although Sec.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 petitions is about the quality and the extent of the information furnished. Such matters are appropriately the subject matter of the First Appeal under section 19(1) and should be first taken up with the 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 Sec.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, petitioner is directed to file his first appeal before the First Appellate Authority and should he still be dissatisfied with the orders of the Appellate Authority he may approach the Commission in second appeal/complaint.”

In Writ Petition No.132 of 2011 with Writ Petition No.307 of 2011, Reserve Bank of India V/s. Rui Ferreira & Others, the

Hon'ble High Court of Judicature at Bombay Goa Bench also held that it is not the intention of Parliament to permit parties who seek information to by-pass the appeals provided by the Act. It was also observed that it was not permissible for the State Information Commission to entertain the complaint made by Respondent No.1 under Section 18 of the Act.

9. In view of the above and the law bearing on the point I am of the opinion that the Complainant should approach the First Appellate Authority first. The Appellate Authority to hear the appeal and dispose the same within the time limit specified in the R.T.I. Act. Needless to add that in case the Complainant is not satisfied he is at liberty to approach the Commission in Second Appeal/Complaint.

Since the complaint was filed in the Commission the F.A.A. to consider the aspect of delay favourably.

10. In view of all the above, I pass the following order.

ORDER

The complainant is hereby directed to file the appeal before the First Appellate Authority within 10 days from the receipt of the order and the F.A.A. to hear and dispose the same having regard to the provisions of the R.T.I. Act. The complaint is disposed off.

The complaint is accordingly disposed off.

Pronounced in the Commission on this 19th day of January, 2012.

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