

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 17/SCIC/2011

Shri R. S. Sawant,
C/o. K.P. Digde,
Flat o. 1, colaco Bldg.,
Near Bar D'Souza, Mangor Hill,
Vasco-da-Gama

... Complainant.

V/s

Venefreda Gracias Braganza,
Public Information Officer,
Goa Coastal Zone Management Authority,
Opp. Saligao Seminary,
P.O. Saligao,
Bardez – Goa

... Opponent.

Adv. Smt. A. Bhohe for Complainant.
Opponent in person.

O R D E R
(13.02.2012)

1. The Complainant, Shri R. S. Sawant, has filed the present Complaint praying that the records and proceedings to the Complainant's application dated 08.09.2010 be called for; that the Complaint be allowed and maximum penalty be imposed on the Opponent and the Opponent be directed to forthwith forward the entire information/documents as sought by the Complainant vide his application dated 08.09.2010 free of cost in terms of Section 7(6) of the RTI Act.

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

That the Complainant vide an application dated 08.09.2010 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 the application was duly received by the Opponent on the same day. That the Opponent was duty bound and under obligation to dispose off the request for information in terms of Section 7(1) of RTI Act. That instead of complying with the provisions of Section 7(1) of the RTI Act the Opponent vide letter dated 08.10.2010 addressed to the PIO, Village Panchayat of Sernabatim,

Vanelim and Colva, Salcete-Goa made an attempt to overcome the provisions of RTI Act. That by the said letter the Opponent sought to forward the Complainant's application dated 08.09.2010 purportedly under Section 6(3)(ii) of the RTI Act. That the issuance of the said letter dated 08.10.2010 by the Opponent is an act which is illegal and contrary to the provisions of RTI Act. That the Opponent has acted malafidely while dealing with the request for information made by the Complainant. That the issuance of letter dated 08.10.2010 by the Opponent that too on the last day amounts to non-furnishing of information and/or malafide denial of information as sought by the Complainant. Being aggrieved the Complainant has filed the present Complaint on various grounds as set out in the Complaint.

3. The Opponent resists the Complaint and the say of the Opponent is on record. It is the case of the Opponent that the Complainant has filed an application before the P.I.O./Opponent to obtain certain information. That the necessary action was taken by the PIO and transferred this application to the Village Panchayat Sernabatim, Vanelim, Colva and Gandaulim, Salcete to provide the requested information. That the Complainant has not mentioned under which provisions of Section 20 he is aggrieved as a result of which the same is not maintainable. It is further the case of the Opponent that under RTI Act the reply of the PIO should be challenged before First Appellate Authority. That since the Complainant has not exhausted the services of First Appellate Authority as prescribed by the Act, Complainant may kindly be directed to approach the First Appellate Authority. According to the Opponent the present Complaint is liable to be remanded to the First Appellate Authority.

4. Heard the arguments. The learned Adv. Smt. A. Bhohe argued on behalf of the Complainant and the Opponent argued in person.

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 by application dated 08.09.2010 the Complainant sought certain information from the Opponent. By letter dated 08.10.2010 the PIO/Opponent transferred the said application under Section 6(3)(ii) of the RTI Act to the PIO, Village Panchayat of Sernabatim, Vanelim and Colva with a

request to provide the information. By reply dated 25.11.2010 the PIO Village Panchayat Sernabatim, Vanelim, Colva and Gandaulim, rejected the application dated 08.09.2010 being beyond the scope RTI Act. Being aggrieved the Complainant filed the present Complaint.

6. The Opponent contends that Complaint is not maintainable without filing the First Appeal.

I shall now refer as to whether the Complainant is maintainable.

It is to be noted here that under Section 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.

7. 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 22.02.2008) 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 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 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, 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/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 bypass 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.

8. 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 having regard to 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 time in the Commission the First Appellate Authority to consider the aspect of delay, if any, favourably.

9. 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 First Appellate Authority to hear and dispose the same having regard to the provisions of the R.T.I. Act. Complaint is disposed off.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 13th day of February, 2012.

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