

**GOA STATE INFORMATION COMMISSION**  
**AT PANAJI**

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

**Complaint No. 139/SCIC/2011**

Shri Rudresh Naik,  
Radha Bldg., 2<sup>nd</sup> Floor,  
Bernard Guedes Road,  
Near Market,  
Panaji - Goa

... Complainant.

V/s

Public Information Officer,  
Town & Country Planning Department,  
Ponda, Opp. Axis Bank, Govt. Bldg.,  
Ponda - Goa

... Opponent.

Adv. Yogesh Naik for Complainant.  
Opponent alongwith Adv. V. Rodrigues.

**O R D E R**

(07.02.2012)

1. The Complainant, Shri Rudresh Naik, has filed the present Complaint praying that the records and proceedings before the Opponent be called for; that the Opponent be directed to furnish the information sought by this Complainant in accordance with his application dated 08.08.2011; that Opponent be held under disciplinary action for deliberately providing misleading information and obstructing access to the information as sought by the Complainant and that Opponent be imposed with penalty as fine in terms of Section 20(2) of the RTI Act for malafidely denying the request as much as obstructing in assessing/furnishing the information to the Complainant.

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

That the Complainant, vide his application dated 08.08.2011 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (P.I.O.)/Opponent. That the information was concerning NOC dated 13.12.2010. That as the said information relates to the office of Town & Country Planning Ponda and being the office documents, should be otherwise open to public and hence

cannot be denied. That the Opponent has furnished misleading information to the Complainant as the Opponent in his letter dated 26.08.2011 has stated that the information sought is not available in the office file thus obstructing the access of the information as sought by the Complainant. That the Opponent has failed to exercise his jurisdiction and perform his duties which is so vested in him thereby acting in an arbitrary manner by not entertaining the application of the Complainant in an irresponsible manner and has illegally withheld the information sought by the Complainant. That the Opponents are liable for imposition of penalty. Being aggrieved for providing misleading information the Complainant has preferred the present Complaint.

3. The affidavit-in-reply of the Opponent is on record. It is the case of Opponent that the present Complaint is misconceived, illegal and without authority of law and on this account alone the Complaint deserves to be dismissed. That the Complaint is not maintainable in as much as against the Order of the P.I.O., there is a First Appeal provided, which is a statutory appeal and these grounds are available before that forum. That the Complainant has not violated the statutory appeal and has approach this Commission hastily without any application of mind. On merit it is the case of the Opponent that there has been no denial of the information to the Complainant. That the documents relating to the NOC dated 13.12.2010 bearing No. TPP/const/vv/41/9/1275 are available in the file bearing No. TPP/const/verem/vaga/41/09 and the said file is available for the inspection of the Complainant at any point of time after giving prior information to the Opponent. That the Complainant has sought for information dated 27.07.2011 of which the said information would require the Opponent to draw inference and opinions from various documents in a file. That none of the information sought for was directly available in the form of records or documents so as to enable the Opponent to provide Xerox copy of the same. That as far as question A and B are concerned it is not possible to comment as the same does not relate to the information under Section 20(f) of the RTI Act. That as far as C and D is concerned the same relates to personalized opinion and facts to the knowledge of an individual and not of information as defined under Section 2(f) of RTI Act, 2005. That as far as E is concerned the same is an interpretation of law which amounts to being an

opinion and can, therefore, not be termed as information under section 2(f) of RTI Act. It is the case of the Opponent in the affidavit in reply that the file is available for inspection at any point of time and the required documents there from can be sought for with proper intimation to his office and, therefore, Complaint is misconceived, illegal and deserves to be dismissed in limine.

4. Heard the arguments. The learned Adv. Shri Yogesh Naik argued on behalf of the Complainant and the learned Adv. Shri Vivek Rodrigues argued on behalf of Opponent. Both the Advocates advanced elaborate arguments.

Advocate for the Complainant referred to the facts of the case in detail. According to him information was sought by application dated 08.08.2011. He also referred to the reply dated 26.08.2011. He dealt in detail about the information sought. According to him information ought to have been given. He also submitted that what has been asked is about notings, etc. He also referred to the affidavit-in-reply and particularly para 7, 8, 9 and 10. Adv. Shri Naik further submitted that Shri Diniz is the PIO and is the person who approved the file, etc. He next referred to the aspect of the Complaint saying that Complaint is maintainable under Section 18(1)(e).

During the course of his arguments Adv. Shri Rodrigues submitted that information is not available. He also referred to para 7 of affidavit. He submitted in detail that information sought does not come within the purview of Section 2(f) of the RTI Act and as such even otherwise the same cannot be granted. He also submitted that reasonable amount of care on the part of P.I.O. was taken. He also submitted that information seeker cannot ask direct queries. Advocate for the Opponent submitted that nothing is hidden from the Complainant. He next submitted that the Complaint is not maintainable and that same is liable to be dismissed.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the learned Advocates of 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 application dated 08.08.2011, sought information in respect of five points A to E. By reply dated 26.08.2011 the Opponent/P.I.O. informed the Complainant that information sought by him from Sl. No. A to E is not available in this file so as to provide him the Xerox copies of such information. This reply is in time.

According to the Opponent name of the information sought for was directly available in the form of records or documents so as to enable to provide Xerox copies of the same. During the course of his arguments the Advocate for the Opponent states that information sought is not available.

6. In short the information is not available. However, it is also a fact that under RTI information that is not available cannot be furnished. Consequently 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.

- (i) In *Shri B. S. Rajput v/s. Council of Scientific & Industrial Research (CSIR)* (F.No.CIC/AT/A 2008/00464 dated 15.09.2008) where Respondent pointed out that all the information barring one information (corresponding to Appellant's request dated 13.06.2007) had been provided, the Commission held that it has no reason to disbelieve the categorical assertion of Respondent and the document in question missing is more than 20 years old. Thus document being untraceable cannot be physically disclosed and resultantly there is no disclosure obligation on the Respondent.
- (ii) In *Shri V.P. Goel v/s. Income Tax Department* (F.No.CIC/AT /A/2008/00455 dated 10.09.2008) where the Appellate Authority held that since the information requested is not maintained by the Officers of Public Authority in regular course of business it did not qualify to be an information 'held' by the Public Authority in terms of Section 2(j) of the R.T.I. Act. The Commission observed that it is not possible to overrule the order of Appellate Authority who has very correctly decided that information which is not maintained or held by the Public Authority cannot be disclosed.

The rule of law now crystallized by the various rulings of C.I.C. 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.

The mandate of R.T.I. is that information seeker must be satisfied about information. With this view in mind I am of the opinion that, if Opponent wishes, he can take the inspection of the said file. Opponent also state to that effect in the affidavit in reply. The Opponent P.I.O. to give the Complainant inspection in respect of concerned file/documents.

7. Advocate for the Opponent submitted that Complaint is not maintainable as First Appeal is not preferred. According to the Advocate for the Complainant, Complaint 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.

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 22.02.2008) 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.

In any case the Complainant to take note of the same in future.

9. In view of all the above I am of the opinion that Complainant should take inspection of the concerned file/documents. Hence, I pass the following Order:-

### **ORDER**

The Complaint is partly allowed. No intervention of this Commission is required as information is not available.

The Opponent/P.I.O. to give inspection of the said file/documents to the Complainant on a mutually agreed date i.e. 16.02.2012 at 10:00 am or thereafter as agreed and the Complainant to take inspection.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 07<sup>th</sup> day of February, 2012.

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