

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

**Complaint No.592/SIC/2010**

Shri Ashok L. Dessai,  
R/o.309, 3<sup>rd</sup> Floor,  
Damodar Phase – 2,  
Near Margao Police Station,  
Margao-Goa

... Complainant

V/s.

1. The Public Information Officer,  
The Chief Officer,  
Canacona Municipality  
At Chaudi, Canacona

... Opponent

Complainant present.

Opponent present.

Shri R. Komarpant representative of opponent present.

**ORDER**  
(16/01/2012)

1. The Complainant, Shri Ashok L. Dessai, has filed the present complaint praying that Opponent/P.I.O be directed to provide the said information sought by complainant by application dated 11/10/2010; that the Complainant be compensated for loss and other detriments suffered for prosecuting his application and that penalty under Sec.20 of R.T.I. Act be imposed on the P.I.O. for not supplying information in time.

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

That the complainant, vide application dated 11/10/2010 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 in response to the Complainant's said letter dated 11/10/2010 the opponent P.I.O. communicated his order vide

letter No.5/CM/RTI/2010-11/1718 dated 9/11/2010 that “relevant file along with all legal document is forwarded to Suptd. Engineer, Circle-I, Altinho, Panaji, for obtaining revised technical sanction for the developmental work taken by this office. As soon as the same is received all attested copies of documents towards all legal formalities undertaken/carried out will be submitted to you. Copy of order of the P.I.O. dated 9/11/2010 is enclosed. That the information sought was required to prove illegal construction and illegal encroachment on the said road in civil suit but the opponent being defendant No.1 did not provide information under R.T.I. Act, to the Complainant for which the Complainant has filed complaint in the Commission. That the P.I.O. did not provide the information with intent to conceal the wrongs, misdeeds, dishonesty etc. committed by the Canacona Municipal Council and thereby to prevent disclosure of the documents to the Complainant to defeat the ends of justice in his Civil suit. Since information was not furnished 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. In short, it is the case of the opponent that the complainant has already filed the Civil Suit and the same is sub-judice. That the present complaint is not maintainable as the present complaint is filed by the complainant in the capacity as advocate of the party. That the filing of civil suit does not give any ground to prefer the complaint before this Hon’ble forum. That the information was provided which was available with the opponent. It is the case of the opponent that there were no falsities at all about the file which was submitted to the Superintendent Engineer, Circle-I, Altinho, Panaji as otherwise the complainant could have confirmed about the same. That the copies would be furnished as soon as the file is received back from the said Suptd. Engineer, Circle I, Altinho, Panaji. The opponent cannot give any positive date for collection of the copies unless the file is received back by the office. That the letters dated 8/4/2010 and 9/6/2010 are pertaining to Shri Pascoal Agnelo Lacerda and the same has no

bearing in the present proceeding. That the complainant did not file any Civil suit but the suit is filed by Shri Ajit Dessai and others. In short, according to the opponent at the relevant time concerned file was not available as the same was with Superintendent Engineer, Circle I, Altinho, Panaji. According to the opponent, the complaint is liable to be dismissed.

4. Heard the arguments. The Complainant, the learned Adv. Shri Dessai, advanced elaborate arguments. According to him delay is caused for not expediting the matter. Initially information is not provided. According to the Complainant the information is provided on 5/9/2011 and that there is total delay of 300 days. The Complainant also submitted that information is furnished but not forwarding letter. The Complainant also filed Written Arguments along with annexures which are on record.

During the course of arguments the opponent submitted that information is furnished and that there is no delay on his part.

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 information is furnished and whether the same was in time.

At the outset I must say that initially reply was signed by Shri Deepak Dessai. By application dated 14/7/2011, the complainant filed objection to the reply dated 31/5/2011. By application dated 25/10/2011 the opponent filed the reply. Application dated 14/12/2011 Complainant has filed an application regarding false, incorrect, misleading information.

It is seen that by application dated 11/10/2010 the complainant sought certain information. By reply dated 9/11/2010 the Chief Officer, Canacona Municipal Council informed the complainant that the relevant file along with all the legal documents is forwarded to Superintendent Engineer, Circle I,

Altinho, Panaji for obtaining revised Technical Sanction for the developmental work taken by their office. It was also informed that as soon as the same is received all attested copies of documents towards all legal formalities undertaken carried out will be submitted to the Complainant. This reply is in time. I need not refer to all the details herein in view of the fact that it is admitted by the Complainant that information is furnished.

6. The grievance of the Complainant is that the information is not furnished properly i.e. it is not accompanied by covering letter; secondly there is delay of 300 days and thirdly information furnished is false, incorrect, misleading etc.

No doubt the information that is furnished is to be furnished properly and not just giving documents/papers. The P.I.O. to take note of the same.

7. Regarding delay. First of all it is to be noted that P.I.O. is obligated to furnish the available information. According to the Complainant, the information is furnished after 300 days. This is disputed by opponent. As far reply dated 9/11/2010 the file was sent to another department and as soon as the same is received back the information would be furnished. When the file was received etc it is to be seen. In any case the P.I.O. should be given an opportunity to explain about the same in the factual matrix of the case.

8. It was contended by the complainant that the information furnished is false, incorrect, misleading etc. This is disputed by the opponent.

It is to be noted here that the purpose of the R.T.I. Act is per se to furnish information. Of course Complainant has a right to establish that information furnished to him is false, incorrect, misleading, etc.; but the complainant has to prove it to counter opponent's claim. The information seeker must feel that he got the

true and correct information otherwise purpose of the R.T.I. Act would be defeated. It is pertinent to note that the mandate of R.T.I. Act is to provide information - information correct to the core and it is for the Complainant to establish that what he has received is incorrect and incomplete. The approach of the Commission is to attenuate the area of secrecy as much as possible. With this view in mind, I am of the opinion that the Complainant must be given an opportunity to substantiate that the information given to him is false, incorrect, misleading etc as provided in Sec.18 (1)(e) of the R.T.I. Act.

9. It was contended by the opponent that complaint is not maintainable. It is true but on a different count. In the facts of this case the Complainant ought to have filed the Appeal before First Appellate Authority. I am fortified in this by the observation of the below mentioned rulings of C.I.C. as well as Hon'ble High Court of Bombay Goa Bench.

(i) 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.”

(ii) 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.

The complainant to take note of the same in future.

10. In view of all the above, the opponent to furnish the proper covering letter, if not, furnished so far the opponent to be heard on the aspect of delay. The opponent should be given an opportunity to prove that the information furnished is false, incorrect, misleading etc. Hence I pass the following order

### **ORDER**

The complaint is allowed. The opponent to furnish the proper covering letter (if not furnished so far ) within 15 days from the date of receipt of this order.

Issue notice U/s.20(1) of R.T.I. Act to the opponent /Public Information Officer to show cause why penal action should not be taken against him for causing delay in furnishing information. The explanation, if any, should reach the Commission on or before **28/03/2012**. The Public Information Officer/opponent shall appear for hearing.

The complainant to prove that information furnished is false, misleading, incorrect etc.

Further inquiry posted on **28/03/2012** at **10.30 a.m..**

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 16<sup>th</sup> day of January, 2012.

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