

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No. 131/SIC/2011

C. S. Barreto,
H. No. 206, Mazalwado,
Assagao,
Bardez - Goa Complainant

V/s.

Public Information Officer - II,
Town & Country Planning Dept., (H.Q.),
2nd Floor, Dempo Tower,
Patto, Plaza,
Panaji – Goa Opponent.

**Complainant in person.
Opponent alongwith Adv. V. Parsekar.**

ORDER
(17.04.2012)

1. The Complainant, Shri C. S. Barreto has filed the present Complaint praying that P.I.O. be directed to immediately furnish the information sought for by the Complainant and that penalty be imposed.

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

That the Complainant, vide his application dated 25.07.2011, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Chief Town Planner, Town and Country Planning Department., Panaji Goa requesting him to furnish the information sought. That by reply dated 29.07.2011 the Public Information Officer – 2 ('P.I.O.)/Opponent informed the Complainant that the information sought by the Complainant is held by other authority and further endorsed the letter to the P.I.O. Directorate of Vigilance, Altinho Panaji and P.I.O. Central Bureau of Information with a request to reply to the Complainant directly. That the Addl. Director (Vigilance)/P.I.O. wrote back to the said P.I.O., vide letter dated 05.08.2011 requesting to be furnished with the list of concerned Staff alongwith their designations in order to enable his office to process the R.T.I. application further. That the P.I.O. of C.B.I. informed that R.T.I. Act

is not applicable to them. That on 23.08.2001 the Complainant received a letter from the P.I.O informing that request is considered and further it was informed that information as sought for cannot be made available as it is not available in material form from the records. Being aggrieved the Complainant has filed the present Complaint.

3. In pursuance of the notice issued the P.I.O. Smt. Martha B. Fernandes appeared. She informed that she has since retired.

4. Heard the Complainant and perused the records of the case.

It is seen that the Complainant sought certain information. Initially the request was transferred to Vigilance and C.B.I. However, by letter dated 23.08.2011 the P.I.O. informed the Complainant that “That the information as sought cannot be made available as it is not in material form in the records.”

Being aggrieved the present Complaint is filed.

5. First of all it is to be seen whether the present Complaint is maintainable.

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

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.

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

(i) In a case [Appeal No. ICPB/A-16/CIC/2006 dated 13.04.2006] 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.

(ii) 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 petition 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.”

(iii) 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.

(iv) In Chief Information Commissioner & Another v/s. State of Manipur & Anr. (Civil Appeal No. 10787-10788 of 2011 dated 12.12.2011) the Hon’ble Supreme Court has observed that Appeal under Section 19 is to be preferred instead of Complaint under Section 18.

6. In my opinion the Complainant ought to have filed the First Appeal before the First Appellate Authority i.e. “Senior Town Planner (II), Town and Country Planning Department, 2nd Floor, Dempo Tower, Patto Plaza, Panaji-Goa.

The Complaint is filed in time. Therefore I intend to transfer the present Complaint to F.A.A. and the F.A.A. to deal with the same in accordance with law. It is open to the Complainant if he wishes to file the Appeal memo afresh. In case he files the same afresh delay may be considered as complaint was filed in time.

7. In view of all the above, I pass the following Order:-

ORDER

The Complaint is transferred to the First Appellate Authority i.e. Sr. Town Planner (II 2), Town and Country Planning Department, 2nd Floor,

Dempo Tower, Patto Plaza, Panaji-Goa. The First Appellate Authority to treat the same as Appeal and dispose the same strictly in accordance with law. The Complaint is disposed off.

The Complaint is according, disposed off.

Pronounced in the Commission on this 17th day of April, 2012.

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

