

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Complaint No. 326/SCIC/2010

Mr. Kashinath Shetye,
R/o. Bambino Building,
Alto Fondvem, Ribandar,
Tiswadi – Goa

...Complainant

V/s

Public Information Officer,
Executive Engineer,
Works Division IX,
Water Resources Department,
Gogol, Margao – Goa

... Opponent

Complainant in person.

Adv. Shri N. Dias for Opponent.

ORDER
(30.04.2012)

1. The Complainant, Shri Kashinath Shetye, has filed the present Complaint praying that the information as requested by the Complainant be furnished to him correctly free of cost as per section 7(6); that penalty be imposed on the Public Information Officer as per law for denying the information to the Complainant; that compensation be granted as for the detriment faced by the Complainant for not getting the information and also for harassment caused for making him run from pillar to post and that inspection of document may be allowed as per rules.

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

That the Complainant, vide an application dated 22.02.2010, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) thereby requesting the Public Information Officer, Dy. Director Water Resources Department, to issue information specified therein of the full Water Resources Department; which was transferred as per section 6(3) of the R.T.I. Act to the Opponent herein. That the Public Information Officer(P.I.O.)/Opponent failed to furnish the required information as per the application of the Complainant, and further no inspection of information was allowed after making the information ready. That the Complainant considering the said non-action on the part of Opponent No. 1 of the RTI

Act and being aggrieved by the said Order has preferred the present Complaint on various grounds as set out in the Complaint.

3. The Opponent resists the Complaint and the reply of the Opponent is on record. In short it is the case of the Opponent that the Opponent was in receipt of the application of the Complainant dated 22.02.2010 addressed to the Dy. Director, Water Resources Department, Panaji/P.I.O. to issue information specified therein and that the same was transferred to Water Resources Dept., W.D. IX, Gogol, Margao under Section 6(3) of the RTI Act which was received by this Opponent on 25.02.2010. That the Opponent vide office letter dated 08.03.2010 intimated to the Complainant stating therein that it does not specify the details of the precise information sought to be required. That also for the same reason the Opponent could not give an estimate of the cost of the copies required under Section 7 of the Act. That in the said letter the Complainant was requested to visit the office of the P.I.O. during office hours on any working day for the inspection and in the meantime identify the documents copies of which are required to be supplied so that the cost of the same could be given to the Complainant. That the Opponent is neither negligent nor deficient in his duty in providing the required information sought by the Complainant. That the Opponent had intimated to the Complainant vide letter dated 08.03.2010 that the office of the Opponent is unable to identify as to which information the Complainant is seeking to obtain and also had been requested to inspect the documents sought thereby by visiting the office of the Opponent. That the office of the Opponent is a public office and must give information whatever is available to the applicant and that the Opponent has nothing against the Complainant. That the Opponent has not committed any breach of the provisions of the RTI Act. That the Opponent has not violated any provisions of the RTI Act. That the Opponent also denies the grounds set out in the Complaint. It is further the case of the Opponent that the Opponent has not passed any Order as such on the application dated 22.02.2010 of the Complainant. However, in good faith the Complainant was informed vide their office letter dated 08.03.2010 about the application and also was called to inspect the documents. That the Act of the Opponent was clear as it was ready and willing to allow inspection to furnish the information sought by the Complainant. That there was no malafide intention on the part of the

Opponent. That the Opponent has nothing against the Complainant either personally or officially so as to deny the information sought by the Complainant. That there is no negligence on the part of the Opponent. The letter dated 08.03.2010 itself shows that Opponent is ever ready and willing to furnish the information as well as inspection of documents sought by the Complainant. That according to the Opponent the Complaint is liable to be dismissed.

4. Heard the arguments. Shri. Kashinath Shetye argued in person and the learned Adv. Shri N. Dias argued on behalf of the Opponent.

The Complainant referred to the facts of the case in detail. According to him Complaint is maintainable and relied on the Judgment, copy of which is produced in the records of other case.

According to him information has been refused. The learned Adv. for the Opponent referred to the facts of the case and advanced elaborate arguments on similar lines as per the reply. According to him the Opponent wanted certain clarifications and inspection was to be given and that is why letter was sent. According to him the Complaint is not maintainable. He also referred to Section 6 as well as Section 3. Adv. for the Opponent submitted that Complaint is liable to be dismissed.

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 22.02.2010 the Complainant sought certain information from the P.I.O., Dy. Director, Water Resources Department to issue information. The information was of full Public Works Department from 01.01.2008 till 01.01.2010 as follows:-

All 19 annexures and also inspection of all files. All the annexures mentioned P.I.O. Executive Engineer, Div. XII, P.W.D., Sanguem-Goa.

It is seen that the said application was transferred under Section 6(3) of the RTI Act to the Opponent herein. By letter dated 08.03.2010 the Executive Engineer A.P.I.O. informed the Complainant that his application does not state with sufficient details the precise information he seeks to obtain. It was also mentioned that since the complainant also requested inspection of documents he may visit their office during office hours and

also to identify the documents whose copies he desires to obtain. Instead of complying with the same the Complainant filed the present Complaint on 15.03.2010.

In fact letter dated 08.03.2010 cannot be considered as denial of information.

6. Advocate for the Opponent contends that Complaint is not maintainable. According to the Complainant it is maintainable and be relied on a judgment in Writ Petition No. 3262 (M.B.) of 2008 P.I.O. v/s. State Information Commission, U.P. & Others (a copy of the judgment is in other file).

It is to be noted here that under Section 18(1) of the RTI 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.

In the case before me there is a letter dated 08.03.2010 from the Opponent. This letter also mentions about inspection. It does not appear that the application was rejected by letter dated 08.03.2010.

I have perused some of the rulings of Central Information Commission as well as Hon'ble High Court and Supreme Court on the point.

- (i) In a case (Appeal No. ICPBA/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 the remedy for such a person who has been refused the information is provided under Section 19 of the Act. It was observed as under:-

“Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act.....”.

In any case in view of the above, the remedy lies of First Appeal.

7. It was next contended by Adv. N. Dias that the Complainant has presented single application with 19 questionnaires which is not as per the mandate of RTI Act. It is seen that the application was transferred to the Opponent herein in terms of Section 6(3) of the RTI Act. It is to be noted here that sub-section (1) of Section 6 expressly requires that a person who desires to obtain information under the Act shall make a request alongwith the prescribed fee to the PIO of the concerned Public Authority specifying the particulars of the information. Sub-section (3) carves an exception to the requirement of sub-section (1). As per the same whether the Public Authority to whom application for information has been made, finds that information demanded is not with it but is held by some other authority, it is duty bound to transfer the application for information to the concerned

authority under intimation to the applicant/information seeker. In my view sub-section (3) of section 6 cannot be read in isolation, sub-section (1) being main section. Intention of the legislature appears to be good considering that RTI Act is people friendly Act. The pure objective behind enacting this provision is perhaps to lessen the travails of an information seeker, lest he is lost in the labyrinth of procedural technicalities.

From the above it is clear that the application is to be made to the P.I.O. of the concerned Department.

8. In the case before me the request is not rejected as such. As per the letter dated 08.03.2010 the Complainant was called to inspect the relevant records and also to specify the information sought. The Complainant did not go. In any case even though the Complaint is not maintainable in view of the rulings referred above, I am of the opinion that there is no harm in furnishing the information by the Opponent.

The Complainant also seeks inspection of all the files. The same can be given. The Opponent can fix a date for inspection and thereafter the information can be furnished. The whole process is to be completed within thirty days.

9. Coming to the prayers in the Complaint, information is to be furnished. However, it is seen that the application dated 22.02.2010 was transferred to the Opponent. The Opponent replied by letter dated 08.03.2010 to the Complainant. In view of this there is no delay as such. Since there is no delay section 7(6) of the RTI Act is not attracted, so also penalty. However, inspection can be given.

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

ORDER

Complaint is allowed. The Opponent is hereby directed to furnish the available information as sought by the Complainant vide his application dated 22.02.2010 within 30 days from the receipt of this Order.

Opponent to give the inspection of documents/files to the Complainant on a mutually agreed date but within ten (10) days from the

receipt of this Order and thereafter on inspection the information be furnished as specified by him. The whole process to be completed within 30 days.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 30th day of April, 2012.

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

