

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

**Complaint No. 471/SIC/2010**

Shri Uday A. Chari,  
R/o. H. No. C5/55,  
Mala,  
Panaji – Goa .... Complainant.

V/s.

1) Public Information Officer,  
V. M. Salgaonkar College of Law,  
Miramar,  
Panaji – Goa .... Opponent No. 1.

2) Shri C. Radhakrishnan,  
Asst. Engineer,  
S.D. I, Sewage Treatment Plant,  
Tonca, Caranzalem – Goa .... Opponent No. 2.

**Complainant in person.**

**Opponent No. 1 in person.**

**Opponent No. 2 in person.**

**ORDER**  
**(05.06.2012)**

1. The Complainant, Shri Uday A. Chari, has filed the present Complaint praying that the Public Information Officer/Opponent No. 1 be directed to furnish the information as sought by him; that Opponent be directed to pay the Complainant cost of Rs.250/- for each day till the Complainant receives the information and that disciplinary action be initiated against the Opponent.

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

That the Complainant vide his letter dated 23.01.2010, sought certain information under the Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (P.I.O.)/Opponent No. 1. That the P.I.O. by letter dated 23.02.2010 informed the Complainant that Shri C. Radhakrishnan/Opponent No. 2 has challenged the decision of the P.I.O. before First Appellate Authority (F.A.A.) objecting disclosure of personal information, as the matter is subjudice and that the information cannot be disclosed to the Complainant. That the Complainant filed First Appeal

before F.A.A. for intervention of appeal filed by Shri C. Radhakrishnan and requested F.A.A. to join the Complainant as Respondent. That the F.A.A. passed the order impleading the Complainant as Respondent. That the F.A.A. passed the order on 10.04.2010 directing the P.I.O. to treat the information sought by the Complainant as a third party information and gave sufficient time to Shri C. Radhakrishnan to file his submission in the matter. That the P.I.O. vide letter dated 28.04.2010 informed the Complainant that the third party/Shri C. Radhakrishnan has objected to disclose his personal information and also informed the Complainant to file any objection orally or in writing if any, within 10 days from the receipt of the letter. That the Complainant did not receive any copy of the objection raised by Shri C. Radhakrishnan in letter dated 28.04.2010. That the Complainant filed written submission on 05.05.2010 to the P.I.O. citing different rulings of C.I.C. and different High Court of India supporting information sought by the Complainant does not any of the restricted items of the R.T.I. Act and Complainant was entitled to receive the said information. That the P.I.O. vide letter dated 09.06.2010 refused to furnish the information sought by the Complainant vide letter dated 23.01.2010 of Shri C. Radhakrishnan stating that the information asked by the Complainant has no public interest and personal information of Opponent No. 2. Being aggrieved the Complainant has filed the present Complaint on various grounds as set out in the present Complaint.

3. The Opponent resists the Complaint and their replies are on record.

The case of Opponent No. 1 is fully set out in the reply which is on record. In short it is the case of Opponent No. 1 that Complainant had sought information and by letter dated 15.02.2010 he was called to collect the information on point 1 and 3. That before the Complainant could collect the information Opponent No. 2 filed an Appeal before the F.A.A. challenging the decision of the Opponent No. 1 and objected the disclosure. The Opponent No. 1 states about filing appeal, impleading Opponent No. 2 as a party till order was passed. It is further the case of the Opponent that the Complainant has remedy under Section 19 of RTI Act and he should have preferred an appeal before the F.A.A. That the details of F.A.A. were also provided. That the Complainant also supports the fact that his similar

request was rejected. It is also his case that under Section 21 of R.T.I. Act no proceedings shall lie against P.I.O.

Opponent No. 2 has also filed objections. The same are on record. It is the case of Opponent No. 2 that Complaint is not maintainable under Section 18(1) or any other provisions of the RTI Act and the same is liable to be dismissed. I need not refer to the reply in detail since I am going to deal only with the aspect of maintainability of the Complainant.

4. Written arguments of the parties are on record. So also various rulings relied by the parties are also on record in the form of Xerox copies. However, I do not wish to delve into any of this aspect. The short point that arises for my consideration is whether Complaint is maintainable and I shall deal with this point.

5. Opponent No. 1 and 2 submitted that this Complaint is not maintainable and they relied on the decision of the Hon'ble Supreme Court. According to the Complainant the Complaint is very much maintainable.

6. I have carefully gone through the records of the case. Admittedly First Appeal has not been preferred. The Complainant has directly approached the Commission. The only point to be considered is whether the Complaint is maintainable.

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 Assistant 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; and
- (e) the Complainant believes 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 the reply is given though information is not furnished in view of Section 8(j) of the RTI Act.

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. In view of all the above, I am of the opinion that this Complaint is to be sent to the F.A.A. i.e. Principal, V. M. Salgaonkar College of Law, Miramar, Panaji-Goa and the F.A.A. to treat the Complaint as Appeal. In case the Appellant wishes to add any grounds or file fresh appeal memo he can do so. Since Complaint was filed in time F.A.A. to see that the aspect of delay be considered favourably. In case the Complainant is aggrieved by the Order of the F.A.A. he can certainly prefer Second Appeal/Complaint.

8. Opponent No. 2 strongly objects to remand the case back. According to him Complaint has to be dismissed. I do agree that much time has passed since Complaint was filed. However, justice and equity demands that no matter be decided unheard. In the ends of justice Complainant should get an opportunity.

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

### **ORDER**

The Complaint is referred/remanded to the First Appellate Authority i.e. Principal, V. M. Salgaonkar College of Law, Miramar, 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 accordingly disposed off.

Pronounced in the Commission on this 05<sup>th</sup> day of June, 2012.

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

