

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No. 157/SCIC/2011

Mr. Rudresh S. Naik,
Radha Bldg., 2nd Floor,
Bernard Rua de Road,
Near Market,
Panaji – Goa Complainant

V/s.

First Appellate Authority,
Senior Town Planner,
Town & Country Planning Department,
Dempo Tower, Patto Plaza,
Panaji – Goa ... Opponent

Adv. Shri Yogesh Naik for Complainant.

Shri F. Gabriel Fernandes, representative of the Opponent.

ORDER
(21.06.2012)

1. The Complainant, Shri Rudresh S. Naik, has filed the present Complaint praying that records and proceedings before the Opponent be called for; that the Opponent be directed to furnish the information sought by the Complainant in accordance with his application dated 04.08.2011; that the Opponents be held under disciplinary action for deliberately not entertaining his application/Appeal and obstructing the access to the information as sought by this Complainant and that Opponent and P.I.O. be imposed with penalty in terms of Section 20 of the R.T.I. Act.

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

That the Complainant, vide his application dated 04.08.2011, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer ('P.I.O.),' Town and Country Planning Department, (H.Q.) to provide information in terms of the said application. That the P.I.O. vide his reply dated 24.08.2011 has stated "as regards to information at Sr. No. 1 of your application referred above it is to inform that information sought by you is not available in material form the information sought by you amounts to interpretation/deducing conclusions which is outside the purview of Right to Information Act." That the

Complainant approached the Appellate Authority in the office of the Chief Town Planner on the grounds that the P.I.Os reply was vague and not as per the provisions of the R.T.I. Act as Interpretation/deducing conclusions are not exempted from R.T.I. Act. That the Opponent vide letter dated 13.09.2011 called the Complainant for personal hearing on 26.09.2011 at 03:30p.m either in person or through authorized representative. That during the personal hearing the Opponent was convinced that the information sought was not exempted from the Right to Information, however, no order or direction has been passed till date. That further the period for disposal of appeal under R.T.I. Act being 45 days no such orders/direction have been passed till date. It is further the case of the Complainant that the Opponent has failed to exercise his jurisdiction and perform his duties, which is not vested in him thereby acting in an arbitrary manner by not entertaining the appeal of the Complainant in an irresponsible manner and illegally has withheld the information sought by the Complainant. Hence the present Complaint.

3. That the reply of the Opponent is on record. In short it is the case of the Opponent that whereas a complaint under Section 18 of the R.T.I. Act was filed by the Complainant alleging that the F.A.A. has not passed any Order disposing First Appeal filed under Section 18 of the R.T.I. Act against P.I.O.-6 of the Town and Country Planning Department. That the Appeal received on 06.09.2011 was heard by the Opponent on 26.09.2011 and order was passed and outwards from Opponent's office dated 07.10.2011. In short it is the case of the Opponent that he discharged his duty as F.A.A. in passing the order within 45 days time and as such prayed that the Complaint be disposed off accordingly.

4. On 19.01.2012 i.e. on the first day of hearing Complainant remained absent. However Adv. Yogesh Naik appeared on behalf of the Complainant. However from 25.04.2012 Complainant and his Advocate remained absent. Opponent P.I.O. was absent however later on his representative appeared. In any case I am proceeding on the basis of record.

5. I have carefully gone through the records of the case. It is seen that the Complainant sought certain information vide application dated

04.08.2011. Vide reply dated 24.08.2011 the P.I.O. furnished the information. Being not satisfied the Complainant preferred an appeal before the First Appellate Authority i.e. Sr. Town Planner (H.Q.). It is seen that notice was issued on 13.09.2011 to appear on 26.09.2011 at 03:30p.m. According to the Complainant the Opponent F.A.A. did not pass any order.

According to Opponent Order was passed within 45 days and the same was outwards and posted on 07.10.2011. The order dated 05.10.2011 is produced by the Opponent. As per the order passed by F.A.A. the reply of P.I.O. has been upheld. Xerox copy of the Outward Register is on record. As per the same the appeal order is outwards at Sr. No. 4146. As per the same it appears that order is passed. It also appears that a copy of the order was sent.

6. In the present Complaint the Complainant has not made P.I.O. a party yet prayers are against P.I.O. From the Complaint it appears that F.A.A. has not passed the order, however, the order is produced on record. Xerox copy of outward register is on record. The Complainant is not before the Commission to say about the same. In the absence of any other material on record it is to be presumed that copy of the order was sent.

7. Coming to the prayers. Prayer 2 is for furnishing the information. However P.I.O. is not before this Commission.

I have perused the application dated 04.08.2011. Information sought is as under:-

- “1. Whether provisions of Town and Country Act, Section 17A (Hill Cutting) are applicable to Mines & Quarries to carry out Mining/quarrying?
2. If the answer to the above question is Yes then kindly provide certified copies of such permissions issued by you to Mines and Quarries.”

The reply furnished is as under:-

“i(i) as regards to information at sr. no 1 of your application referred above it is to inform that information as sought by you is not available in material form, the information sought by you amounts to

interpretation/deducing conclusions which is outside the purview of the Right to Information Act. The Section 17A of the Goa Town and Country Planning Act 1974 is transcribed below:

“17A. Prohibition on cutting of hilly land and filling up of low lying land, etc.- No occupier of any hilly or sloppy land or any low lying land shall, by himself or through his servants or agents or any other persons, undertake the work of cutting of any hilly or sloppy land, or filling up of any, low lying land, in, over or upon any hilly or sloppy land, as the case may be, without obtaining the prior written permission from the Chief Town Planner.

.....

i(ii) As regards to information sought at Sr. no 2 of your application referred above information cannot be made available of permissions issued to mines and quarries as no permission have been issued. “

It is to be noted here that under R.T.I. P.I.O. not to interpret any law or rule for the applicant.

In Shri R. K. Mirg v/s. Ministry of Home Affairs (F. No. CIC/AT/A/2006/00154 Dt. 03.11.2006) it is observed as under:-

“Section 2(f) of the RTI Act allows an appellant access to information “held” by a public authority. Since Rules and Acts were already in the public domain, these were freely accessible to anyone who wanted to have them, and hence should not be said to be “held” by any public Authority. It is, therefore, not open to the appellant to seek “interpretation” of a law or rule from the public authority disguised as seeking information.

In overall consideration of the matter before the Commission, it is held that there is no responsibility cast on the respondents to “interpret” any law or rule for the Appellant. The appeal is rejected”.

In B. R. Beedu v/s. Directorate General of Vigilance, Customs & Central Excise (F.No. CIC/AT/A/2009/000376 decided on 22.07.2009) it was held that the respondents are not even obliged to answer such queries of the Appellant which go well beyond the scope of Section 2(f) of the R.T.I. Act being queries for explanation and elucidations which left room for interpretation.

In Anand Kishore v/s. Customs & Central Excise Department (F.No. CIC/AT/A/2009/000569 decided on 25.08.2009), it was observed that the provisions of the R.T.I. Act cannot be stretched to a point where an applicant can raise his concerns about interpretation of law and demand that the public Authority react to it.

In short R.T.I. cannot be a route or cannot be used as a route for seeking interpretation of law from officers of public authority.

8. The Appeal as per record is disposed in time. So the question of penalty, etc. does not arise. Apart from that First Appellate Authority is not covered by the penal provisions of the Act. Besides, P.I.O. is not a party before this Commission.

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

ORDER

No intervention of this Commission is required as appeal is disposed off. The Complaint is disposed off.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 21st day of June, 2012.

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

