

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No. 352/SIC/2010

Shri Kashinath Shetye,
R/o. Bambino Bldg., Alto Fondvem,
Ribandar,
Tiswadi – Goa

...Complainant.

V/s
Public Information Officer,
Executive Engineer Works Div. XI,
Water Resources Department,
Gogol,
Margao – Goa

...Opponent.

Complainant in person
Adv. Shri A. Talaulikar for Opponent.

O R D E R
(29.06.2012)

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 per detriments 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 documents be allowed as per rules.

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

That the Complainant had filed an application dated 22.02.2010 under Right to information Act, 2005 ('R.T.I. Act' for short), thereby requesting the Public Information Officer ('P.I.O.'), Executive Engineer, Div. XII, P.W.D. to issue information specified therein, which was transferred as per Section 6(3) of the RTI Act to the Opponent. That the PIO/Opponent failed to furnish the required information as per the application of the Complainant and further to pay a sum of Rs.690/- for incomplete information without arriving at calculations of pages as per Section 7(3)(a). That considering the said non-action on behalf of the Opponent and being aggrieved by the said order, the Complainant 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 information sought by the Complainant is very huge and voluminous and, therefore, it is practically not possible to provide the information to the Complainant. That the Complainant has presented single application with 19 annexures which is not as per the mandate of the RTI Act, 2005. That the annexures are not pinpointing and specific and, therefore, it is difficult to understand the application as to which works the information pertains to. That the application of the Appellant dated 22.02.2010 is very vague and ambiguous and cannot be literally understood as to which information the Complainant wants. That the PIO/Opponent found it extremely difficult/impossible to furnish the information unless the Complainant actually gives the details of information such as date and place of work, etc, nor locate the same. The Opponent denies that letter dated 05.03.2010 is not as per the mandate of RTI Act. That there was genuine effort on the part of SPIO to furnish the required information to the Complainant. That letter dated 05.03.2010 was sent to the Complainant and the same was well within the stipulated time limit. That the Complainant was apparently negligent and careless and he did not bother to visit the office of the SPIO/Opponent when he was specifically requested to visit the office and conduct inspection of the papers as requested by the Complainant so that necessary information could be given to him. The Opponent denies the grounds as set out in the Complaint. In short it is the case of the Opponent that the Complainant was requested vide letter dated 05.03.2010 to collect the information by paying necessary charges of the documents which the Complainant did not do. That the information sought by the Complainant was of full Water Resource Department but the Complainant failed to specify and pinpoint the details of works done by the Department such as nature of works, places and dates, etc. The Opponent admit that letter dated 11.03.2010 was signed as A.S.P.I.O. It is further the case of the Opponent that the Complaint has been filed without resorting to the other remedies available to the Complainant in terms of First Appeal, etc. in order to harass the Opponent. According to the Opponent the Complaint is liable to be dismissed.

4. Heard the arguments. The Complainant argued in person and the learned Adv. Shri A. Talaulikar argued on behalf of the Opponent.

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 Executive Engineer XII, PWD, Sanguem-Goa. 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.

It is seen that the said application was transferred under Section 6(3) of the RTI Act to the Opponent herein. By letter dated 05.03.2010 the Executive Engineer requested the Complainant to deposit an amount of Rs.690/- towards the cost of documents. Instead of complying with the same the Complainant filed the present Complaint on 15.03.2010.

In fact letter dated 05.03.2010 cannot be considered as denial of information nor the order passed by the P.I.O.

6. Advocate for the Opponent contends that Complaint is not maintainable. According to the Complainant it is maintainable and he relied on a judgment in Writ Petition No. 3262 (MB) of 2008, PIO V/s. State Information Commission, UP & Others (a copy of the judgment is in other file).

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

A complaint can also be filed in case the Public Information Officer does not respond within the time limit specified under the Act. In the case before me there is a letter dated 05.03.2010 from the Opponent. The application speaks of depositing the amount. However, the Complainant did not deposit the amount. It does not appear that application was rejected by letter dated 05.03.2010. In fact the Complaint is premature. Apart from that the remedy in the instant case lies of First Appeal.

I have perused some of the rulings 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.

In short if at all the Complainant wanted to file he should have filed the First Appeal.

7. It was next contended by Adv. Talaulikar that the Complainant has presented a 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 requirements of sub-section (1). As per the same when 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 PIO of the concerned Department.

8. In the case before me the request is not rejected as such. As per the letter dated 05.03.2010 Complainant was requested to deposit the amount. However the Complainant did not comply with the same. 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 furnished. 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 05.03.2010 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 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 29th day of June, 2012.

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