

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No. 04/SCIC/2010

Shri Kashinath Shetye,
Alto Fondvem,
Ribandar, Tiswadi - Goa

.... Complainant

V/s.

Public Information Officer,
Dy. Director of Administration,
Public Works Department,
Altinho,
Panaji – Goa

.... Opponent.

Complainant in person.

Opponent in person.

ORDER
(27.07.2012)

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, and fully without reserving any information to save any person; that penalty be imposed on the Public Information Officer for not providing information and inspection of records within stipulated time limit of thirty days and that information be given free of cost as per Section 7(6) of Right to Information Act, 2005.

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

That the Complainant, vide application dated 02.09.2009, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer of the Administration Department (P.I.O./Opponent). That the application was complete in all respect and was submitted in person. That the said application was reluctantly accepted in the office of Public Works Department, Altinho, Panaji. That the reply to the said application was that the application is transferred under 6(3) of the RTI Act, 2005 to various divisions, but no information given till date. That the request should have been sent under section 5(4) of the RTI Act and information taken from all deemed State Public Information Officers and

given to the Complainant. Hence, the Complainant has preferred the present Complaint on various grounds as set out in the Complaint.

3. The Opponent resists the Complaint and the replies are on record. In short it is the case of Opponent No. 1 that the Complainant vide his application dated 02.09.2009 has addressed to Public information Officer, Public Works Department, Panaji requesting to submit the details/documents of the contractors which restricts participating in new tenders and also list of class 1A contractors registered in category of Roads & Land Development in Public Works Department. That the Public Works Department has 25 Divisions each headed by the Executive Engineer dealing with the works of Buildings, Roads, Water Supply & Sewerage, Mechanical & Electrical Works, etc. That vide Memorandum dated 22.12.2006 all 25 Executive Engineers of Public Works Department are appointed as independent State Public Information Officers of respective divisions and Dy. Director of Administration has been designated as State Public Information Officer for subject matter pertains to the offices at Altinho. That the Dy. Director of Administration, who is designated as S.P.I.O. vide Order dated 22.12.2006 deals with matters pertaining to office at P.W.D. head office at Altinho, Panaji. That the Complainant had asked for the details pertaining to works which are available with the Executive Engineers of the concerned divisions who are also designated as S.P.I.Os and deals with the matters independently. Thus the application was forwarded to concerned S.P.I.Os vide letter dated 24.09.2009 under Section 6 sub-Section (3) of RTI Act, 2005 requesting them to furnish the information directly to the Applicant. That as regards point No. 2 of the application of the Complainant the information available at the head office in the EO's Section of this Department, the Complainant was informed/requested to collect the same by paying photocopying charges vide letter dated 30.09.2009, however, the Applicant did not turn up to collect the same. That the application of the Complainant was rightly forwarded to the S.P.I.Os designated as per Order dated 22.12.2006 under Section 6(3) of the Act and not deemed S.P.I.Os as stated by the Complainant.

Opponent No. 1 further in his statement dated 11.10.2010 states that the application dated 02.09.2009 was also transferred under Section 6(3) of the RTI Act to Water Resources Department Panaji requesting them to

furnish the required details/documents directly to the Complainant. The Opponent No.1 also prays that all the EEs of respective Divisions of this Department who are designated as S.P.I.Os be made parties and the name of Opponent No. 1 be deleted from the case of the Complainant.

The Opponent No. 2 (P.I.O. – Executive Engineer Div. II, PWD, Panaji-Goa) in his reply states that the Opponent No. 2 was in receipt of the application dated 02.09.2009 addressed to the PWD, Altinho, Panaji-Goa to issue information specified therein which was transferred under Section 6(3) of the R.T.I. Act by office of P.W.D., Altinho, Panaji vide their letter dated 24.09.2009 which was received by Opponent No. 2 on 29.09.2009. That the Opponent No. 2 had replied vide their letter dated 22.10.2009 to the Complainant furnishing the information available and to inspect the documents sought by Shri Kashinath Shetye. Therefore, Opponent No. 2 is not liable for the lapses on the part of the Complainant for not visiting the office of Opponent No. 2 for inspection of the documents/records. It is further the case of Opponent No. 2 that the Opponent No. 2 vide their letter dated 22.10.2009 intimated the Complainant that the information sought can be taken on payment of the prescribed fees and also to contact the office of Opponent No. 2 for inspecting the documents. However, the Complainant failed to collect the information sought as well as to contact the Opponent No.2's office for inspection. That the Opponent No. 2/P.W.D., Division II is neither negligent nor deficient in his duties in responding to the Complainant and hence not liable for any penalty/action. The Opponent no. 2 denies specifically the grounds set out in the Complaint. In short it is the case of Opponent No. 2 that information sought was ready for delivery on payment of prescribed fees and to inspect the documents as per letter dated 24.09.2009 sent by the Opponent no. 2 to the Complainant. However, the Complainant did not collect the same. That, therefore, the Complaint be dismissed as against the Opponent No.2.

Opponent No. 3 (P.I.O., Executive Engineer, Division VI, PWD, Fatorda, Margao-Goa) in reply states that the application dated 02.09.2009 was transferred to P.W.D. VI, Fatorda, Margao vide letter dated 24.09.2009 under Section 6(3) of the R.T.I. Act which was received by Opponent No. 3 on 29.09.2009. That the Opponent was kind enough to furnish the information to the Complainant vide letter dated 14.10.2009 being within time as per proviso of the RTI Act, 2005. That the Complainant was

intimated within time vide letter dated 14.10.2009 to have inspection and furnish the information sought thereby. That the Opponent No. 3 was neither negligent nor deficient in his duty. Opponent No. 3 specifically denies the grounds as set out in the Complaint. In short according to Opponent No. 3 that the Complaint does not lie and is liable to be dismissed.

It is the case of Opponent No. 6 (P.I.O., Executive Engineer, Division XIV, PWD, Fatorda, Margao-Goa) that the application dated 02.09.2009 was transferred to Opponent No. 6 vide letter dated 24.09.2009 under Section 6(3) of the R.T.I. Act, which was received by Opponent No. 6 on 29.09.2009. That vide letter dated 29.06.2010 Opponent No.6 furnished the information to the Complainant. That since there was another application from the same applicant i.e. Shri Kashinath Shetye also transferred by P.W.D. Altinho, Panaji to Opponent No. 6, the said information was not furnished within time due to clerical oversight under the impression that the same has been furnished to the Complainant. That however, later on Opponent No. 6 realised that the same remained to be supplied/furnished and, therefore, immediately on noticing the error of oversight, the Opponent submitted the said information on 29.06.2010. That the said error was mainly on account of clerical oversight and not deliberate or intentional. It is the case of Opponent No. 6 that the information available was furnished vide letter dated 29.06.2010 and also by same letter the Complainant was requested to take inspection of documents sought by him. That the Opponent No. 6 was not negligent nor deficient in his duty in responding to the complainant and hence not liable for any penalty/action. That the Opponent No. 6 denies specifically the grounds set out in the Complaint. In short it is the case of Opponent No. 6 that the information available was furnished to the Complainant however, the Complainant failed to take inspection and that Complaint be dismissed.

It is the case of Opponent No. 7 (P.I.O./Executive Engineer, Division XVI, P.W.D. Ponda) that the application dated 02.09.2009 addressed to P.W.D. Altinho, Panaji-Goa to issue information specified therein which was transferred to Opponent No. 7 under Section 6(3) of the RTI Act, 2005 by letter dated 24.09.2009 was received by Opponent No. 7 on 29.09.2009. That Opponent No. 7 had replied vide letter dated 06.10.2009 to the Dy. Director of Administration, office of Principal Chief Engineer, P.W.D.,

Altinho, that the information sought by Shri Kashinath Shetye does not pertain to P.W.D. W.D.-XVI (Bldgs) as it is Building Division. That further it is stated that the Opponent No. 7 is an office that deals with building division and nothing else. That the Opponent No. 7 is not liable for the lapses on the part of other P.I.Os for non-furnishing of the information sought by the Complainant. Opponent No. 7 denies the grounds set out in the Complaint specifically. In short it is the case of Opponent No. 7 that the Complaint is liable to be dismissed.

4. The reply of the Opponent No. 5 is on record. It is the case of Opponent No. 5 that the Application of the Complainant seeking information was transferred to him vide letter dated 24.09.2009. That vide letter dated 22.10.2009 the Opponent no. 5 requested the Complainant to attend their office for the inspection of documents available in their office. That the Complainant never approached the Opponent No. 5 for inspection of the documents available with his office. According to Opponent No. 5 there are no grounds for the Complainant to file the present complaint.

All the parties have filed the reply. All the replies are on record. All are more or less similar.

5. Heard the Complainant and Adv. N. Dias for Opponent. Both sides referred to the facts of the case in detail.

According to Complainant information ought to have been furnished under Section 5(4).

Adv. Dias submitted that information is furnished and in some cases the Complainant did not collect the information. According to him Complaint is premature and not maintainable.

6. 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 the Complainant vide application dated 02.09.2009 sought certain information from the Public Works Department. The information consisted of 5 point i.e. Sr. No. 1 to 5. This letter was received on 22.09.2009/23.09.2009. By letter dated 24.09.2009 the Dy. Director Administration P.W.D. transferred the application to the Executive Engineer

Div. II/VI, VII, XIII, XIV, XVI and XXIII P.W.D. By letter dated 30.09.2009 P.I.O., Dy. Director of Administration P.W.D. informed the Complainant that information regarding point No. 2 requesting to furnish the list of all class 1A contractors registered in the category of roads and land Development of P.W.D. is ready and requested the Complainant to collect the same by paying Rs.4/-. It was also reiterated in the said letter about transfer of remaining points to concerned EEs.

By letter dated 14.10.2009, the Executive Engineer W.D. VI furnished the information.

By letter dated 03.03.2010 the Dy. Director of Administration/P.W.D. referred the request to Water Resources Department. By letter dated 19.03.2010 the P.I.O. Water Resources Department furnished the information. By letter dated 30.09.2009 the Dy. Director of Administration & P.I.O. requested the Complainant to collect information by paying a sum of Rs.4/-.

By letter dated 11.02.2010, the Executive Engineer W.D. XIV (NH) P.W.D. Fatorda, requested the Complainant to collect the information after paying the necessary fees.

By letter dated 06.10.2009 the Executive Engineer XVI sent the available information to the Dy. Director of Administration with a copy to the Complainant.

By letter dated 10.05.2010 Executive Engineer W.D. VII furnished the information to the Complainant. Of course by letter dated 20.10.2009 Executive Engineer W.D.VII (NH) requested the Complainant to collect the information after paying the charges. This letter was received by the Complainant as can be seen from the AD card.

By letter dated 22.10.2009 the P.I.O. Works Div. II, P.W.D. called the Complainant to collect the information after paying charges. However the Complainant did not collect the same.

By letter dated 22.10.2009 the P.I.O. W.D.XIII(R) P.W.D. requested the Complainant to attend office, inspect and collect documents after paying necessary charges.

In short it is seen that some Divisions furnished the information and some Divisions called the Complainant to collect the information on paying the required charges. However the Complainant did not collect the information.

7. The Complainant submitted that request should have been sent under Section 5(4) of the R.T.I. Act, 2005 and information taken from all Deemed P.I.Os and given to the applicant.

Under Section 5(4) P.I.O. may seek assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

As all information required to be furnished may not be readily available with the P.I.O. the P.I.O. may seek the assistance from any other officer of the public authority as may be considered appropriate to enable him/her to discharge duties in proper way so that information is furnished within prescribed period. Thus the law establishes a right of the P.I.O. to have the assistance from concerned officers of public authority.

If the information is held at any other level of the same public authority P.I.O. can seek the same under Section 5(4) but if the information is not with the public authority of which he is P.I.O. he should refer to the concerned authority under Section 6(3)(ii).

In *Kishen Mirchandani v/s. Mumbai Port Trust* (F. No. CIC/AT/A/2009/000139, decided on 31.07.2009) it was observed that the provision of Section 5(4) cannot be read to mean that a CPIO receiving an R.T.I. application had only one course of action open to him, viz. collecting the information from all its sources and transmitting it to the applicant.

In *Vivek Sawhney v/s. Prime Minister's office, New Delhi* (CIC/WB/C/2009/000237 dt. 15.04.2009 decided on 22.01.2010) it is observed that it is not open to a citizen to place questions regarding every public authority before a single public authority unrelated directly thereto and then expect to get information in accordance with sub-Section (1) of Section 7.

8. It is pertinent to note here that sub-Section (1) of Section 6 expressly requires that a person who desires to obtain information under R.T.I. Act shall make a request alongwith the prescribed fee to the Public Information Officer of the concerned Public Authority specifying the particulars of information. Sub-Section (3) carves an exception to the requirement of sub-Section (1). As per the same where a Public Authority, to whom an application for information is 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) of Section 6 being the main Section. 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.

I have perused various rulings on the point. I need not reproduce the same herein. The rule of law now crystallized by various rulings is that application seeking information is to be made to the Public Information Officer of the concerned Department i.e. who may be in possession of requisite information.

9. Again the Complaint in the present form is not maintainable. The Hon'ble High Court of Bombay Goa Bench as well as the Hon'ble Supreme Court has held so. However as most of the Opponents have furnished the information there is no harm to grant the same.

8. Coming to the present Complaint request is not rejected as such. Some P.I.Os have furnished the information and some P.I.Os called the Complainant to collect the information on payment of required charges. In view of this there is no point to dismiss the Complaint on the ground of maintainability. The Complainant to collect the information. In case inspection is required the same can be given. Regarding delay, if any, is not considered in view of maintainability of the Complaint. It is observed that if Complaint is not maintainable penalty proceedings are also not maintainable.

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

ORDER

Complaint is partly allowed. The Opponents i.e. Executive Engineer W.D.XIV P.W.D., W.D.II P.W.D, W.D. XIII (R) P.W.D to furnish the information to the Complainant as sought by him vide his application dated 02.09.2009 (22.09.2009) on payment of required charges within 30 days from the receipt of this order.

The Opponent/Opponents to give the inspection of documents to the Complainant on a mutually agreed date but within 8 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.

Needless to say that Complainant to collect the same and take inspection as prayed by him.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this **27th day of July, 2012.**

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

