

GOA STATE INFORMATION COMMISSION
Ground Floor, Shrama Shakti Bhavan, Patta Plaza, Panaji-Goa
Coram: Smt. Leena Mehendale, State Chief Information Commissioner

Comp. No. 90/SCIC/2013

Decided on: 28/11/2013

Ashok Desai,
309, 3rd floor,
Damodar Phase-II,
Near Police Station,
Margao-Goa

.....Complainant

V/s

Mr. Prashant Shirodkar,
The Then Public Information Officer,
Chief Officer of,
Canacona Municipal Council,
At Chaudi Canacona Goa,
Presently Dy. Collector & SDO,
Canacona, at Chaudi, Canacona-Goa

.... Opponent

Complainant -Self
PIO- Self

ORDER (Open Court)

This Complaint is filed on 21/06/2013, by an Advocate in respect of information sought by him under RTI (Right to Information Act) dated 30/10/2012 on the question which presumably pertains to the Masonary structure/Building constructed in survey No. 267/33 of village Nagarcem Palolem of Canacona taluka standing in the name of Kusta Pandu Desai. PIO (Public Information Officer) of the Municipal Corporation Canacona has given his reply on 19/11/2012, within the time limit prescribed by the RTI Act. The reply is not found satisfactory by the Complainant. However the Complainant has not approached the FAA which he is entitled to do within 30 days after receiving reply from the PIO. The Complaint before the SIC (State Information Commission) has been filed after about 7 months, from the date of PIO's reply.

In the Complainant's application to SIC, he has not given any reason as to why remedy available to him by way of First Appeal was not availed by him. On being specifically asked this on the day of hearing his brief reply was that the same is not mandatory under RTI Act.

The RTI Act provides for First Appeal to the First Appellate Authority to the State Chief Information Commissioner .It also provides for complaint in specific situations.

I refer to section 18(1) (e) as well as 19(1) and 19(3) of the RTI Act, as under:

18 (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,-

18(e):- Who believes that he or she has been given incomplete misleading or false information under this Act;

19 (1) :- Any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt or such a decision, prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority.

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

19(3):- A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information commission:

Provided that the Central Information commission or the State Information Commission, as the case may be , may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The specific provision of Appeal under section 19 (1) is clearly meant as the First immediate relief to the person seeking information and not receiving proper information from the PIO. The FAA (First Appellate Authority) is also normally a senior Officer of the department who ranks higher above PIO (Public Information Officer). If there is anything in the reply given by the PIO which can be called false or unsatisfactory or as a dodging reply, the FAA, being senior Officer of the same department has a far better chance to capture the mistake and correct it by giving proper direction to the PIO. Very often the FAA is also a direct supervisory officer of the PIO. In such a case, he also gets a chance to make administrative assessment of the ground reality in relation to the information deductible from the RTI question and take corrective steps.

The provisions under section 18 (a) to (f) are meant to take care of those situation where it is assessed by the CIC (Chief Information Commissioner) that the RTI applicant may be getting cornered so as to make his questions infructuous. This is clear from the wording of section 18 (a) (b)(c)(d) & (f). Section 18(e) has also been included so as to make the provision of section 18 complete. This inclusion does not however mean that the CIC must entertain all the Complaints under section 18 (e). If the section 18(e) is interpreted to mean that appeal under section 19 need not to be made and it is sole discretion of the applicant whether to pursue the matter under section 18(e) without bothering to take the recourse of section 19 (1) within time, then it would make section 19 (1) totally redundant and will defeat the purpose of section 19 as well as of the RTI Act to a large extent.

It however doesn't mean that the provision of section 18(e) are completely redundant. It would therefore be left to the judgment of Information Commissioner, who is also the second Appellate Authority above FAA, whether or not to entertain a Complaint coming directly under section 18(e). Particularly so where the original applicant has not availed the remedy of Sec 19 (1). There cannot be any hard and fast rule as to when the Information Commissioner should entertain such application and when reject it. A best possible guideline would perhaps be to assess what damage is caused to public at large. Even this assessment cannot be express or elaborate, but will be of subjective satisfaction of Information Commissioner.

In the present Complaint I do not find any reason mentioned as to why Complainant could not avail of the first remedy available, by approaching the FAA (First Appellate Authority). It is seen that he had asked 12 questions in respect of Masonary Structure /Building constructed in survey No. 267/33 of village Nagarcem Palolem of Canacona Taluka in Municipal ward No. 4, by introducing the name of Kusta Pandu Dessai. The opening para states

“provide the following information under the RTI Act 2005 in respect of MASONARY STRUCTURE / BUILDING CONSTRUCTED IN SURVEY NO.267/33 of village Nagarcem Palolem of Canacona Taluka in Municipal ward No.4(Pansulem) of CMC Canacona in survey standing in the name of Kusta Pandu Dessai.”

He has himself brought in a certain amount of vagueness in this questions. It is not clear if the land in said survey number 267/33 stands in name of Kusta Pandu Dessai or someone else. Also, which is the survey number standing in the name of Kusta Pandu Dessai? Also, how many structures are there in the said survey number? As a result of this vagueness in the introducing para, the PIO has been able to state that the information is not available or that it was not applicable except for mentioning in one reply that as per the Municipal record two houses No. 92 & 93 stood in the name

of Kusta Pandu Desai, and that too without stating if those two houses stood in survey no.267/33.

I therefore dismiss the Complaint. The Applicant will however be free to ask fresh question regarding any masonry structure at village Nagarcem Palolem of Canacona Taluka regarding housing permission and its legality, if he thinks that he can bring more clarity to his question. If asked, such questions shall be entertained by the present PIO within the time frame allowed under RTI Act 2005.

With the above observation, Complaint is dismissed. Order declared in Open Court. Parties to be informed.

Sd/-
(Leena Mehendale)
Goa State Chief Information Commissioner,
Panaji-Goa