

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 103/2009

Dr. M. N. Pal,
Ex-Dean (G.M.C.),
11, GOMECO Hsg. Society,
Bambolim – Goa.

..... Complainant.

V/s.

Public Information Officer,
Shri Umeshchandra L. Joshi,
The Under Secretary (Personnel),
Government of Goa, Secretariat,
Porvorim – Goa.

..... Opponent/Respondent.

Complainant in person.

Adv. Mrs. Nilima Narvekar for Respondent.

ORDER **(12-04-2010)**

1. The Complainant, Dr. M. N. Pal, has filed the present Complaint praying that the Respondent be directed to furnish the specific information sought by Complainant on 22/9/2009 under RTI Act, 2005; for suitable penal action for failure to furnish specific information without any reasonable cause within the time specified under the Act and for disciplinary action for knowingly furnishing misleading and incorrect information.

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

That by letter dated 22/9/2009 the Complainant had requested Public Information Officer (P.I.O.) the Respondent to furnish certain information under section 6 of the Right to Information Act, 2005 ('RTI' Act for short). That the Respondent by his reply dated 7/10/2009 directed the Complainant for visiting his office at 11.00 a.m. on any working day

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and inspect the File bearing Nos. 7/74-PER(VOL II) and 7/5/74-PER(VOL III) respectively in order to obtain his desired copies from these Files. That the Complainant wrote to Respondent on 19/10/2009 stating that his suggestion for inspecting files and obtain copies etc. are misplaced and that he has not sought any inspection. That the sole purpose of P.I.O. has been to confuse the issue in order to pursue the dilatory tactics from his end, with ulterior motive. That basing on these constitutional provisions the applicant had requested the Respondent to furnish certified copies of those documents wherein His Excellency had recorded his sanction. That reply on 2/11/2009 came as a rude shock and surprise to the Complainant as he was informed that whatever request had been received by him under RTI Act, 2005 has already been complied and nothing is left for him to be done in the matter. It is the case of the Complainant that he wanted the said information/documents to ascertain the facts that prior approval of Governor was truly obtained by the office of the Respondent before issuing those penal orders to the Complainant. The Complainant has mentioned in detail about malafide intention, manipulations etc. in the Complaint. Since information is not furnished the Complainant was forced to file the present Complaint.

3. The Respondent/Opponent resists the Complaint and his reply is on record. According to the Respondent the Complainant has preferred this Complaint without preferring First Appeal. On merits it is the case of the Respondent that he had acted bonafide in requesting the Complainant to inspect the concerned files and pinpoint the specific document from which information is needed or of which copies are needed and that this act cannot be termed as dilatory tactic. That the cause of Complaint arises

from Government decisions conveyed to the petitioner vide Order No. 7/5/74-PR(Vol. II) dated 31/7/2000 and Order No. 7/5/74-PER(VOL-III) dated 1/10/2001. That the matter of requesting a spell of unauthorized absence from duty and counting of past service in the context of unauthorized absence was examined in the Personnel Department and relevant orders were issued after decision by competent authority in accordance with the Rules of Business of the Government of Goa. It is further the case of the Respondent that it is routine knowledge among junior officers that orders and notifications in Government matters are expressed as "By order and in the name of the Governor of Goa". That every file does not get submitted to the Governor. The Cabinet Ministers, Chief Minister and State Cabinet make the decision on behalf of His Excellency, the Governor. That the Complainant who was the head of the important and largest Department in the State cannot pretend to be ignorant of this fact. That in the present case the decision was recorded by the Competent Authority and notified as "By order and in the name of the Governor of Goa" and that the Complainant is feigning ignorance of this time honoured convention and filed this Compliant. That the file containing the proposal was submitted and duly approved by His Excellency the Governor of Goa on 30/3/2001. It is also the case of the Respondent that the information was not denied and that he could not furnish non-existent documents or information.

4. The Complainant has filed the reply-in-rejoinder. The Respondent also filed the reply to the rejoinder. Both are on record. I have perused the same.

5. Heard the arguments. The Complainant argued in person and Adv. Smt. N. Narvekar argued on behalf of Opponent/Respondent. Both sides advanced elaborate arguments.

6. I have carefully gone through the records of the case and considered the arguments advanced by the parties. The point that arises for my consideration is whether the information sought has been furnished or not and whether the same is in time?

It is seen that by letter dated 22/9/2009 the Complainant sought certain information. It is seen that by reply dated 07/10/2009 the applicant was requested to visit the Department for inspection of file and obtain the certified copies of documents as desired by the Applicant. By letter dated 19/10/2009, the applicant turned down the request. I do agree that there is no provision in the RTI Act to direct the citizens to approach the Public Authority and inspect the documents when a specific information is sought. However, some times this is done if parties are agreeable solely with a view that party seeking information is satisfied about the same and gets the adequate information within time.

By letter dated 2/11/2009 the Opponent/Respondent furnished the information. As per the same whatever information available has been furnished. It is to be noted here that Public Information Officer should give full information whenever such a request is made and not in peace meal manner. It is incumbent upon the Public Information Officer to provide such information as it commands. The information given ought to be crystal clear and in proper form. Considering the request for information there is about 8 to 10 days delay in furnishing the information. However, the same might have occurred due to the letter

dated 7/10/2009 and the reply of the Applicant dated 19/10/2009. Public Information Officer might have thought that inspection may be sought and then information be given. This may be alludable but not justified under RTI Act. In any case Public Information Officer henceforth should take a note of time schedule in dealing with RTI applications.

7. I must say that object of the RTI Act is to ensure greater and more effective access to information under the control of public authority. No democratic Government can survive without accountability and the basic postulate of accountability is that people should have information about the functioning of the Government. The idea behind the Act is that citizens should know the facts the true facts. RTI Act ensures maximum disclosures and minimum exemptions consistent with the constitutional provisions prescribing at the same time confidentiality of sensitive information.

It is to be noted here, that RTI Act, in general, is the time bound programme between the Administration and the citizen requesting information and every step will have to be completed within the time schedule for presentation of request and disposal of the same, presentation of First Appeal and disposal by the Appellate Authority.

8. It appears that during the pendency of the Complaint some information has been furnished. It is the contention of the Complainant that the information furnished is incomplete, incorrect, false and misleading.

9. Advocate for the Opponent/Respondent contends that information furnished is correct. Respondent also argued on maintainability of the Complaint without preferring First Appeal.

An Appeal proceeding is a continuation of the original proceeding. The Appellate Authority can vary, modify or substitute its own decision in place of the decision of the Order of P.I.O. The Appellate Authority can quash or set aside the decision of Public Information Officer and can pass its own decision, which may be altogether different, from that of the original decision. I do agree that First Appeal ought to have been filed. It is held that any information seeker should exhaust the remedy of First Appeal first. No doubt the Act provides for filing Complaint.

In any case nothing turns much on this in the instant case.

10. Now it is to be seen whether information given is incomplete, incorrect, misleading etc. as contended by the Complainant. According to Advocate for the Opponent it is not so.

It is to be noted that purpose of the RTI Act is per se to furnish information. Of course, Complainant/Applicant has a right to establish that information furnished to him is false, incorrect, misleading etc., but the Complainant has to prove it by means of some sort of documentary evidence to counter Opponent's claim. The information seeker must feel that he got the true and correct information otherwise purpose of RTI Act would be defeated. It is pertinent to note that mandate of RTI Act is to provide information – information correct to the core and it is for the Complainant to establish that what he has received is incorrect and incomplete. The approach of the Commission is to attenuate the area of secrecy as much as possible. With this view in mind, I am of the opinion that the Complainant must be given an opportunity to substantiate that the information given to him is incomplete, incorrect, misleading etc.

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11. In the light of the above, it is seen that information is furnished and in view of submissions made no intervention is required, however, the Complainant should be given an opportunity to prove that the information is incomplete, incorrect, misleading etc. Hence, I pass the following Order:-

No further intervention in the Complaint is required. The Complainant to prove that information furnished is false, incorrect, misleading etc.

Complaint is accordingly disposed off.

Further inquiry posted on 06/05/2010 at 10.30 a.m.

Pronounced in the Commission on this 12th day of April, 2010.

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

