

# GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 28/SCIC/2010

Shri Dnyaneshwar Uttam Phadte,  
H. No. 1782, "Shri Nagesh Niwas",  
Opp. S.S.C. Board Gate,  
Alto, Porvorim, Bardez – Goa.

..... Complainant.

V/s.

Assistant Public Information Officer,  
(The Assistant Director of Education),  
Directorate of Education,  
Panaji - Goa.

..... Opponent/Respondent.

Adv. A. Kakodkar for Complainant.

Opponent in person.

## **ORDER** **(26-04-2010)**

1. The Complainant, Shri Dnyaneshwar Uttam Phadte, has filed this Complaint praying: - (a) to initiate an inquiry into the matter; (b) direct Respondent to produce the records pertaining to the information sought under section 18(4) and to impose penalty on Respondent as provided in the Right to Information Act, 2005.

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

By letter dated 7/12/2009 the Complainant requested for certified copies of information under Right to Information Act ('RTI' Act for short). By letter dated 5/1/2010 (towards the fag end of 30 days period allowed) Respondent rejected the request purportedly under section 8(g) and 8(h). It is the case of the Complainant that none of the said grounds apply and even if they applied, Respondent ought to have specified how and which of the grounds apply. That it is incomprehensive how issuance of a certified copy of letter 5/9/2009 or copy of the inward/outward register

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can endanger any person or their physical safety. That moreover the letter dated 5/9/2009 has already been produced by Director of Education in an affidavit filed before the Hon'ble High Court of Bombay at Goa in Writ Petition No. 658/2009 filed by the Complainant's wife Smt. Sheela Kolambkar. That the refusal of request for information is only to harass the Complainant so that he is put through additional expenses in pursuing this matter before this Commission and made to spend time. Since the information was important the Complainant had asked, however, the request was rejected. Being aggrieved, the Complainant filed the present Complaint on various grounds which are set out in the Complaint.

3. The Opponent resists the Complaint and the reply is on record. It is the case of the Opponent that Complaint is not maintainable; that Complaint is false and frivolous; that the Application is considered and reply is given; that no first Appeal is provided and there is no justification given by the Complainant for filing the Complaint directly to this Authority. On merits it is the case of the Opponent that the application was rejected vide letter dated 5/1/2010 in terms of sub-section (g) and (h) of section 8 of RTI Act as Complaint filed against the Complainant's wife who is the teacher in Primary School was under investigation and squarely covered under above provision. In short according to Opponent the grounds under section 8(g) and (h) of Right to Information Act are applicable in referring the Complainant's application and accordingly, the Opponent has dealt with the application. That the Complaint has no merit and as such liable to be dismissed.

4. The Complainant has also filed the rejoinder which is on record. According to the Complainant, Complaint is maintainable and that there is

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no bar in law to prefer a Complaint directly without first filing a first Appeal. That the two are separate and distinct remedies and the Complainant is free to choose any one of the two. That there is no investigation pending against the Complainant's wife.

5. Heard the arguments. The learned Adv. Amey Kakodkar argued on behalf of Complainant and the Opponent argued in person.

Advocate for the Complainant advanced elaborate arguments. He narrated in detail the facts of the case and also about Writ Petition filed in the Hon'ble High Court. According to him, this letter was produced in the High Court. He submitted that the Complaint is dated 5/9/2009 and that transfer was on 23/9/2009. According to him application for information was rejected so as to not to provide information and rejection is malafide. According to him issue is whether jurisdiction is rightly exercised or whether it is malafide. He next referred to ground (g) and (h) of section 8. According to him both these sub-sections are not attracted. He also submitted that Complaint was in fake name and therefore, there was no question of attracting any ground (g) and (h). He next argued about penalty. According to him, the Public Information Officer ought to be punished. He also submitted that Opponent falsely invoked the ground (g) and (h) to delay and hide the information and secondly even if they have any grounds some documents could not have been rejected.

6. During the course of his arguments, Asst. Public Information Officer submitted that letter was confidential and they had mentioned about threats and also about fear of their lives and he believed and as such invoked sub-section (g) and (h) of section 8. He also referred to the Writ Petition. He submitted on similar lines as mentioned in his reply.

7. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that falls for my consideration is whether the relief prayed is to be granted or not?

At the outset, I must say that Right to Information Act, 2005 has been enacted to provide for a legal right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. From the scheme of the Act it is clear that Right to Information Act ensures maximum disclosures and minimum exemptions consistent with constitutional provisions prescribing at the same time confidentiality of sensitive information. Ordinarily all information should be given to the citizen but there are certain informations protected from disclosure. Section 8 is an exception to the general principles contained in the Act. This provision exempts disclosure of information or apprehension or prosecution of offenders.

In the case at hand the Complainant made an application dated 7/12/2009 received on 8/12/2009 seeking certain information. By reply dated 5/1/2010 the request was rejected under sub-section (g) and (h) of section 8 of RTI Act. This is in time. Being aggrieved, the Complainant has filed this Complaint. About maintainability of the Complaint, I shall refer a little later.

First I shall refer to section 8(1)(g) and (h) which are as under: -

8(1) -----  
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- (g) information the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose.
- (h) Information which would impede the process of investigation or apprehension or prosecution of offenders.

There is no dispute with the proposition that investigation which would impede the process of investigation apprehension or prosecution of offenders is to be denied or withheld. However, it is to be noted here that mere existence of an investigation process cannot be a ground for information. Public Information Officer failed to show satisfactorily as to why the release of such information would hamper the investigation process. According to Advocate for Complainant there is malafide in rejecting on that ground. Advocate for Complainant advanced a number of submissions to show that invocation of section 8(1)(g) and (h) was malafide and to hide the information. According to him, Public Information Officer very well can take such a plea in order to deny the information.

Looking at the nature of submissions I have perused the said letter which is in the nature of Complaint. It is also mentioned that they have changed their names for fear of their lives. Looking at the letter there is no wonder that Public Information Officer was concerned about safety even though names were changed. However, only fault with the Public Information Officer is he ought to have shown how information would hamper the investigation process. To my mind no malafides can be attributed to Public Information Officer. At the most it would be a case where there was lack of proper appreciation of the provisions of RTI Act.

It would not be proper to attribute malafides to every rejection of the request. In my view some latitude is to be given to the Public Information Officer in the factual matrix of this case.

The information sought is on 3 points and the other two points are in relation to point No. 1 only. Hope in future Public Information Officer would give reasons as to why exemptions under section 8 are attracted. Simply saying so is not sufficient. Again if Complainant had preferred appeal perhaps his problem would have been solved. But he chose not to do so instead preferred the present Complaint.

8. Now it is to be seen whether the Complaint is maintainable. In the case before me the situation is information sought and the same is rejected in terms of exemptions under section 8. And a Complaint is filed on the ground that rejection is malafide. The Public Information Officer should clearly state reasons why the information is considered by him to be exempt under any particular clause of section 8 merely quoting sub-section of section 8 is not adequate. To my mind even assuming the ground is not valid yet the fact remains that good or bad the Public Information Officer acted within law. The remedy lies of First Appeal. I have perused some of the rulings of Central Information Commission. In a case [Appeal No. ICPB/A-16/CIC/2006] it was held that since the Appellant has not preferred any appeal before the First Appellate Authority on the decision of the CPIO after he received the same, he should do so at the first instance before approaching this Commission. In two other cases the Central Commission has refrained from entertaining appeal directly filed against the order of C.P.I.O. and has advised the Appellant to first file an appeal under section 19(1) with the Senior Officer.

Even assuming that such Complaints are allowed it would set a bad precedent as every information seeker would take this short cut on the ground that the denial is malafide. On any count procedure prescribed has to be followed.

Adv. Shri Kakodkar contends that Complaint is provided by the Act. There is no dispute about the same. Under section 18(1) of the Act the Complaint may be filed if—

- (a) the Complainant is unable to submit an application for information no Public Information Officer has been designated by the Public Authority;
- (b) the Public Information Officer or Asst. Public Information Officer refuses to accept the application for information;
- (c) the Complainant has been refused access to any information requested under the act;
- (d) the Complainant does not receive a response from the Public Information Officer within the specified time limit;
- (e) the Complainant has been required to pay an amount of fee of which is unreasonable;
- (f) the Complainant believe that he has been given incomplete, misleading or false information; and (g) in respect any other matter relating requesting or obtaining access to the record under the Act.

Thus Complaint can also be filed in case the Public Information Officer does not respond within the time limit specified under the Act.

Advocate for Complainant tries to convince the denial is malafide.

However, to my mind the same has backing of law. Even assuming the same is not correctly applied in the absence of any reasoning it can be held that the same has been applied without any basis.

9. I must say the arguments advanced by the Advocate for the Complainant are very attractive at first blush, however, the same do not stand the scrutiny of the RTI Act. Normally, I am of the opinion that such type of complaint is not maintainable. However, in the instant case I am inclined to grant the relief firstly because said letter is already produced in the Hon'ble High Court and secondly because RTI Act is people friendly and user friendly Act and to deny information on such ground is not in the true spirit of RTI Act. However, this will not be cited as a precedent. This is in the factual matrix of the case alone. Advocate for the Complainant vehemently presses for the penalty. Since I have come to the above conclusion the question of penalty does not arise. However, considering the application dated 7/12/2009 and reply dated 5/1/2010, the same is within time. Therefore, the question of penalty on this ground does not arise.

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

“The Opponent is directed to furnish the information as sought by the Complainant vide his application dated 7/12/2009 within 10 days from the receipt of this Order”.

The Complaint is accordingly disposed.

Pronounced in the Commission on this 26<sup>th</sup> day of April, 2010.

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





