

GOA STATE INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Complaint No. 25/2006/CT

M/s. Lalka Associates,
25 Goyal Chamber,
Plot No. 82/9C,
National Highway,
Gandhidam - 370 201,
Gujarat - India.

..... Complainant.

V/s.

Public Information Officer,
The Commissioner of Commercial
Taxes, Panaji - Goa.

..... Opponent.

CORAM :

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per A. Venkataratnam)

Dated : 19/10/2006.

None for complainant.

APIO with authorization on behalf of PIO.

ORDER

The complainant applied under Section 6 (3) of the Right to Information Act, 2005 (22 Of 2005) (hereinafter referred to as the RTI Act) to the Additional Commissioner and Public Information Officer, Office of the Commissioner of Commercial Taxes, Panaji - Goa seeking certain information about the cable connections in the State and the amount of revenue earned from them for the period from 1/4/2005 to 30/9/2005. They have enclosed a fee of Rs.25/- for the application and Rs.50/- for providing information on CD. The Assistant Public Information Officer of that office sent a letter to the complainant on 6/6/2006 rejecting the information under Section 8 (1) (d) of RTI Act. Thereafter, the complainant preferred an appeal on 15/6/2006 to the Commissioner of Commercial Taxes against the order of rejection. This was followed up by another letter dated 19/6/2006 to the Commissioner as a reminder. The appeal

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is not yet decided. Meanwhile, the complainant approached the Central Information Commission on 28/8/2006 and this Commission by a complaint on 3/7/2006.

2. The notices were served on both complainant as well as the PIO to submit their say on the complaint and also the PIO was directed to appear in person or through his authorized agent for personal hearing. The APIO represented the PIO on two occasions before this Commission and complainant who is from Gandhidham, Gujarat, acknowledged receiving the notice but failed to turn up for the hearing.

3. During the course of hearing the APIO has neither produced a letter of authority nor any written statement on the contents of the complaint. When she was asked to file a letter of authority, she undertook to produce the same before us and subsequently did so. There is also on record a letter to the complainant by the Ex. Engineer, Div. III of Electricity Department, Ponda furnishing the information of electricity connections given in his area for urban and rural HT connections, copy of which was endorsed to this Commission.

4. In the absence of any defence by the PIO, we proceed further in disposing off the complaint based on the material on record. We have seen that when the application for request was made to the PIO accompanied by the fees (more than what is prescribed by the Goa Government) instead of the PIO taking the decision one way or the other, the APIO was pleased to reject the request. We have commented on the role of the APIO in our case No.8/06/POL, Clevy Lopes Lobo Vs. PIO Police Department and many other cases. The role of APIO has been clearly laid down in the RTI Act. We reiterate the same view in this case also. In fact, the cases coming before us more than amply prove that neither the Goa Government is taking any initiative to organize any training programme for its officials as required under Section 26 of the RTI Act nor the officials are taking pains to read the Act or the judgements of this Commission placed on its website. Consequently, because of such cavalier attitude of PAs, the members of public are put to great hardship and inconvenience. The APIO can neither reject the information nor provide it. His role is limited to passing on the application requesting for information or the appeals to the respective authorities. We, therefore, set aside order-cum-letter dated 6/6/2006 of the APIO in this case for want of jurisdiction and treat it as non-est.

5. Hence, the appeal is allowed and the information may be provided in one month.

(A. Venkataratnam)
State Chief Information Commissioner,
GOA.

DISSENTING ORDER

6. I respectfully disagree with the findings of my learned senior brother. In the present case, admittedly, the complainant is not individual person. It is not clear whether the complainant is a company or firm or otherwise.

7. Section 3 of the Right to Information Act, 2005 confers right on all the citizens to obtain information subject to provisions of the Act. Sub-section (1) of Section 6 of the RTI Act contemplates that a person who desires to obtain any information under the RTI Act shall make a request in writing or through electronic means specifying the particulars of the information sought by him or her. Further, proviso to sub-section (1) of Section 7 also stipulates that whenever the information sought concerns the life or liberty of a person the same shall be provided within 48 hours of the receipt of the request. Similarly, in clause (a) of sub-section (3) of Section 7 contains the phrase "Requesting him to deposit fees". Further, clause (b) of sub-section (3) also makes a reference "Information concerning his or her right". Sub-section (4) of Section 7 of the Act provides that the Public Information Officer shall provide assistance to a person who is sensorial disabled. In terms of the proviso to sub-section (5) of Section 7 of the Act, no fee shall be charged for the persons who are below poverty line. If all these provisions are read together, it becomes crystal clear that only a natural person can obtain the information. The words him or her contains in sub-section (1) of Section 6 also make this very clear. Similarly, in clause (b) of sub-section (3) of Section 7 also make a reference "His or her which can relate only to natural person. A company or a firm cannot be a person sensorial disabled or persons below poverty line. Besides, there cannot be any information concerning the life or liberty of a company or a firm. All these clearly establish that the information under Section 6 of the Act could be obtained only by the natural person and not

legal person. The Act has also not defined the word "person". One of the objectives of the Act as contained in the preamble is that the democracy requires a individual citizenry and transparency of information. Being so, it appears that the RTI Act is intended to confer right to information action mainly on citizens. Therefore, in my view, the complainant being not a natural person is not entitled to the information under the RTI Act.

8. On perusal of the records, it is seen that the complainant has addressed a complaint dated 3/7/2006 to this Commission. The complainant sought the information vide application dated 3/5/2006 received in the office of the opponent on 8/5/2006 as can be seen from the reply dated 6/6/2006 of the APIO.

9. Aggrieved by the decision of the APIO, the complainant filed an appeal dated 15/6/2006 before the Appellate Authority. While the appeal was pending for disposal, the complainant filed the present complaint before this Commission on 3/7/2006. The complainant has also addressed a complaint dated 26/8/2006 to the Central Information Commission.

10. As per sub-section (6) of Section 19 of the RTI Act, an appeal under sub-section (1) or sub-section (2) of Section 19 of the RTI Act shall be disposed off within 30 days. As stated earlier, the complainant filed the first appeal before the first Appellate Authority on 19/6/2006 and therefore, the time limit for disposal of the appeal expires on 19/7/2006. Whereas, the complainant addressed the complaint to this Commission on 3/7/2006, which is much before the expiry of the time limit, provided for the disposal of the first appeal. In fact, the complainant ought to have waited for 30 days as provided in sub-section (3) in Section 19 of the RTI Act and then approach the Commission with proper second appeal. Therefore, the complaint of the complainant is pre-mature. It is also not clear whether the FAA disposed off the first appeal or not as the complainant chose to remain absent for the hearing. Being so, the complaint of the complainant deserves to be rejected.

11. I agree with the findings of my senior learned brother that the APIO has no authority under the RTI Act to decide the applications. It is not evident from the letter of the APIO whether the APIO has communicated the decision of the PIO or APIO herself has decided the application.

12. In view of the reasoning given by me above, the complaint dated 3/7/2006 of the complainant is hereby rejected.

(G. G. Kambli)
State Information Commissioner, GOA.

FINAL ORDER

13. I am grateful to my learned brother's clear views on the matter of rights conferred on the citizens by the RTI Act. My main focus was on whether the requested information could be given rather than whether the complainant was eligible for asking for and receiving the reply. Thanks to the views of my learned brother, I have gone through in detail the various provisions regarding the entitlement to ask for and receive the information. Except for Section 3, all other Sections mentioned in the Act refer to a "person". Section 2 (j) defines "Right to Information" as a right to inspect in work documents records, taking notes extract of notes, taking certified sample of materials, appointing information in the form of disks, floppy etc. Section 6; (7)(1) proviso; Section 7, (4), (5), (7) and (8) all speak of "persons". Section 11 of the Act relates to third party information, which includes Public Authorities themselves, which are institutions. The third party who is a non-citizen, not only has a right to be heard before the PIO, it can even file an appeal before FAA and before the Commission. Section 18 empowers the Commission to receive and inquire into a complaint from any "person". Section 19 empowers any "person" aggrieved by the original order to file an appeal. Section 21 of the Act protects the action taken in good faith by any "person" under the Act. Thus, we see that except under Section 3 of the Act, there is no mention of "citizen" under any other provisions of the Act authorizing to ask for/receive information. Of course, the long title contains word "citizen" but substantive provisions relate to grant of right to the citizens and other persons. Section 3 is also subject to the other provisions of the Act. I quote verbatim of Section 3 as follows: -

"Subject to the provisions of the Act, all citizens have the right to information".

14. A cursory reading of the Sections reveals that all citizens do have the right to information but it does not confine exclusively to the citizens only. There are broadly three (3) groups of persons entitled for the information. These are (i) the citizens: (ii) the non-citizens: and (iii) legal persons like the companies or firms or other societies etc. The right to life and liberty under Article 21 of the constitution is available for both citizens and non-citizens. Therefore, the information concerning the life and liberty is available for non-citizens as well which has to be provided within 48 hrs. on seeking the information under this vary Act namely Right to Information Act, 2005. I have therefore, no doubt in my mind that the right is conferred on all citizens and also all other persons mentioned above by me. However, the request for obtaining the information, which is prescribed under Section 6, has to be made only by a human being and not by a company or firm or society or other legal person. This is clear from the words "specifying the particulars of the information sought by him or her". This clinches the issue that only human beings (natural persons) can request for the information as the companies are in the neutral gender. Thus, I agree with my learned brother and revise my opinion about the maintainability of this appeal as long as a company applies for it. With this view, the original order is modified to read as follows: -

"The second appeal is dismissed as not maintainable for the reason that the Appellant is not entitled to request for the information under section 6 of the RTI Act".

(A. Venkataratnam)
State Chief Information Commissioner,
GOA.