

The Goa State Information Commission

Complaint No. 1/2006/Inf.

1. Amar B. Naik Complainant 1.

V/s

1. Government of Goa
represented by the Chief
Secretary to Government
(Information & Publicity Dept).
Govt of Goa Respondent 1.
2. The Director & Ex-Officio Joint
Secretary of Goa, (Information &
Publicity) Dept. of Goa. Respondent 2.

In the matter of Section 18(1) and 25 of the RTI Act
(Central Act of No. 22 of 2005)

Applicant and Respondent 2 in Person

CORAM : A. Venkataratnam., SCIC
G.G.Kambli, SIC

(Per G.G. Kambli)

Dated : 30/6/2006.

ORDER

An enquiry was initiated under section 18 (1) (a) (2) of the Right to Information Act 2005 (herein after referred to as the Act) upon the receipt of the complaint dated 16/3/2006 from the complainant. In brief, the grievances of the complainant are that only a few public authorities have designated Public Information Officers and published manuals containing the Suo moto information under section 4 (1) (b) of the Act. The Complainant further made grievances that Public authorities have not appointed Public Information Officers although more than 270 days had passed since the enactment of the Act and

that some of the Public authorities are still struggling with the preparation of list of Public Information Officers including Courts, High Courts, Consumer forums, Municipal Councils, State Pollution Control Board. The complainant further states that those Public authorities who have prepared the manuals have kept them in the file and not displayed on the notice boards of the Department for the benefits of the citizens. Not knowing where the Commission is located he sent it to the new Secretariat. It was sent to the office of respondent No. 2 and was placed before us on 25/5/2006 , when the commission met for hearing at the residence of the SCIC, the commission not having an office of its own.

2. The complainant therefore prayed that the list of PIO's of Government Offices, NGO's etc should be displayed outside the office on the boards along with the First Appellate authorities, fee structure, procedure of the appeal, address of the State Information Commissioners and also the manuals of Public authorities including the particulars such as organization, functions, powers and duties of Officers and employees, directory of Information and employees statement of Boards Counsels, Committees and other bodies the location subsidy programmes and beneficiaries. The information is to be displayed by way of painted boards.

3. Since, the complaint is of general nature regarding the non-compliance of the provisions of the Act particularly section 4 and 5 of the Act, the State of Goa and the Director of Information who is the Ex-officio Joint Secretary in the Department of Information and Publicity were impleaded as the respondents. The notice was issued to the respondent No. 2 requiring him to remain present for hearing on 25/5/2006. The respondent No. 2 remained present at the residence of the SCIC and was asked to file an affidavit point wise on the complaint and the compliance of the provisions of the Act and

the steps taken to make the Commission functional. A copy of the summons was forwarded to Respondent No.1. The matter was posted for hearing on 1st June 2006. On 1/6/2006 the respondent No. 2 remained absent. However, the respondent No. 2 submitted a note instead of an affidavit. The said note also does not convey any information on the points raised by the complainant and the directions given by the Commission on 25th May 2006. The Commission, therefore, was satisfied that there were reasonable grounds to issue summons under section 18 (3) (a) and (c) of the Act and therefore issued these summons on 1/6/2006 directing the respondent No. 2 to remain present and file an affidavit on 12/6/2006 on the following points.

- a) The list of all Public Authorities under the Government of Goa and the separate lists of the authorities (i) who have designated the Public Information Officers (PIO) and the Assistant Public Information Officer (APIO) and first appellate authorities before the statutory time limit of 100 days from the coming into force of the Act, i.e. on or before 23/09/2005 as required under section 5(1) and (2) of the Act, (ii) the list of authorities who have done so after that date; and (iii) the list of authorities who have not done so far;
- b) The list of Public Authorities who have published within 120 days of the commencement of the Act, i.e. on or before 13/10/2005, the information on all the 17 points mentioned in section 4(1) (b) of the Act and those who have done so after the due date and those who have not done so till now;
- c) The steps taken by the Departments under section 4(3) and (4) of the Act to disseminate the above information;

d) The date wise steps taken to make the State information Commission functional and the reasons for not providing the staff, premises, budget for the commission so far and the dates when this will be done in addition to the information mentioned above;

4. On 12/6/2006, the respondent No. 2 sought one week's time to file an affidavit on the grounds that the matter is referred to the Government for approval and to the Law Department whether the affidavit is required to be filed as directed by the Commission. In the said letter dated 9th June 2006, the respondent No. 2 had also made a statement that the information has not been received by his Department from all the Heads of the Department who have been asked to prepare manuals and to issue orders of PIO's and APIO's if not done earlier. The request of the respondent No. 2 for extension of time was granted and the matter was fixed for hearing on 19th June 2006 at 11.00 a.m. On 19/6/2006, the complainant was present. However, the respondent No. 2 remained absent. The case was called out four times and was reserved for orders. On the same day i.e 19/6/2006 at about 3.15 p.m., an affidavit sworn in by the respondent No. 2 was delivered in office of the Commission alongwith the covering letter dated 19/6/2006. The proper course ought to have been followed by the respondent No. 2, if the affidavit was not ready, was to seek further time when the case was fixed for hearing for filing the affidavit and not to send the affidavit after the hearing was over. The Commission cannot take any evidence or documents in the absence of other parties as it amounts to gross violation of the principles of natural justice as the complainant was not available and the copy of affidavit could not be given to the complainant to file his say, if any.

5. As stated above, the request of the complainant was to get the provisions of section 4 and 5 of the Act complied

with. The complaint is not directed against any particular Public Information Officer and the complainant has alleged that some Public authorities have not designated the PIO's nor list of APIO's and PIO's has been displayed on the notice boards. Therefore, in the absence of the APIO's and PIO's the citizens are unable to approach the PIO's with the request for information. Sub-section (1)(a) of section 4 of the Act enjoins upon every Public authority to maintain all its records duly categorized in the manner and form which facilitates easy access of Information under the Act and ensure that all records with the Public authority to be computerized within a reasonable time and subject to availability of resources. The provision of sub-section (1) have come into force at once i.e. with the date of assent of Act by the President of India on 15/6/2005. Further, in terms of Clause (b) of sub-section (1) of section 4 of the Act, every Public authority was required to publish 16 particular matters as mentioned therein, within 120 days from the enactment of the Act i.e. on or before 13/10/2005 Sub-clause (2) clause (b) of sub-section (1) of section 4 of the Act also provides that every Public authority shall display the names, designation and other particulars of the Public Information Officers.

6. In terms of sub-section (2) of section 4 of the Act, every Public authority is required to take steps in accordance with the requirements of Clause (b) of sub-section (1) to provide such information so motu to the Public at regular intervals through various means of communication including internet so that the Public have minimum resort to the use of the Act to obtain information. And for this purpose, the information shall be disseminated widely in such form and manner, which is easily accessible to the Public. As per sub-section (1) of the section 5 of the Act, every Public authority is required to designate as many Officers as the State Public Information Officers in all administrative units or offices to

provide information to the persons under the Act. Further as per sub-section (2) of the said section 5 of the Act. Every Public authority has to also designate the Officers as APIO's within 100 days of the enactment of the Act at Sub-Divisional level or Sub-District level.

7. The section 4 and 5 of the Act are mandatory in nature and therefore, it is the duty of every Public authority to comply with these mandatory provisions. The Commission in the summons issued to the respondent No. 2 had directed the respondent No. 2 to file an affidavit, inter-alia, regarding the compliance of the provisions of section 4 and 5 of the Act by all the Public authorities as the information Department is implementing the Act and the respondent No. 2 is the head of the field Department as also ex-officio Joint Secretary of the Ministry of Information & Publicity under the single file system..

8. We shall now deal with the affidavit filed by the respondent No. 2. It does not mention whether it is filed on behalf of both respondents or only by respondent No. 2 on his own behalf. We are taking note of this affidavit without prejudice to the right of the complainant to file his reply, if any as the Commission is not passing any, final order on the complaint. Now at the outset, it may be pointed out that the affidavit filed by the respondent No. 2 is vague, ambiguous and self-contradictory. The respondent No. 2 has not submitted the affidavit as per the directions given by the Commission.

9. At para one of the affidavit, the respondent No. 2 has taken a plea that the complainant has not approached the Department of Information and Publicity for any information and approached this Commission without mentioning reasons thereof. In this context, it is to be noted that the grievances of

the complaint are that the Public authorities have not complied and published details as required by Clause (b) of sub-section (1) of section 4 of the Act. Similarly, he has also stated that few Departments have designated APIO's and PIO's and the First Appellate authorities as required by section 5 (1) (2) of the Act. If the Public authorities have not displayed the names, designation of the APIO's and PIO's and not specified the first appellate authorities, the citizen cannot submit the request for information. Therefore, the citizen is unable to submit his request as he is not aware to whom to approach for seeking information in the absence of APIO's and PIO's. Therefore, the complaint of the complainant is of general nature and falls within the purview of clause (a) of sub-section (1) of section 18 of the Act. Being so, it was not necessary for the complainant to approach the respondent No. 2.

10. At para 2 of the affidavit the respondent No. 2 has stated that all Government Departments, Public Sector Undertakings and Statutory bodies have already designated the Public Information Officers and Assistant Public Information Officers and names of PIO's and APIO's as well as the First Appellate authorities have also been displayed at all the offices after the publication in the Government Gazette whereas at para 4, the respondent No. 2 stated that the Department of Information and Publicity has reminded the Public authorities to issue appointment orders of PIO's and APIO's, if not done earlier. Therefore, the statements made in para 2 and para 4 are mutually contradictory. If all the Government Departments, Public Sector undertakings and Statutory bodies have already designated PIO's and APIO's and the First Appellate authorities and the lists has been displayed in all the offices after Publication in the Government Gazette, the question of sending the reminders by the Government Department does not arise. Further, the expression, "if not done earlier" also suggests that the respondent No. 2 is not

aware as to whether all the Government Departments have designated and displayed the lists of all PIO's and APIO's and the First Appellate authorities. Even in the letter dated 9/6/2006 of the respondent No. 2, presented before the Commission on 12/6/2006 seeking adjournment, the respondent No. 2 stated that the information has not been received by the Department of information and Publicity from all the Heads of Department and even asked them to prepare manuals and to issue appointment orders to PIO's and APIO's if not done earlier.

11. In spite of this, the respondent No. 2 has made a false statement at para No. 2 of the affidavit stating that all Government Departments, Public Sector undertakings and Statutory bodies designated PIO's and APIO's and displayed their lists along with the First Appellate authorities after notification in the Government Gazette. Therefore, the Commission reserves its decision to take further action against the respondent No. 2 for making false statement on oath.

12. The Commission had directed the respondent No. 2 to file the list of Public authorities: -

- (1) Who have designated PIO's and APIO's and the First Appellate authorities before the statutory time limit and 100 days from the enactment of the Act i.e. on or before 23/09/2005 as required under section 5(1) and (2) of the Act.
- (2) The list of Public authorities who have done so after the expiry of the statutory period of 100 days and
- (3) The list of the Public authorities which have not yet done so far.

From the affidavit filed by the respondent No. 2. It is seen that all the Public authorities have designated PIO's, APIO's and the First Appellate authorities within statutory period.

13. In para 3 of the Affidavit the respondent No. 2 has stated that the information on all 17 points mentioned in section 4(1) (b) of the Act has been compiled by the respective Departments. As no specific details have been furnished by respondent No. 2, a presumption arises that the all Public authorities complied with the provisions of section 4(1) (b) of the Act within time limit laid down in the Act as per the averment made by the respondent No. 2 in the affidavit.

14. The respondent No. 2 has also stated that the respondent No 2. is not at all connected with the work of other Departments for compiling the particulars as required by section 4(1) (b) of the Act. If this is so, we fail to understand as to what was the need for the respondent No. 2 to issue reminders to all other Departments. Secondly, the respondent No. 2 was not directed to give the reasons for not designating PIO's, APIO's and the First Appellate authorities or for not compiling the information; but the Commission sought the factual information from the respondent No. 2 regarding the Public authorities, which have complied with the provision within the stipulated time; and the list of Public authorities, which have not yet complied with the provision of the Act. Therefore, it is to be construed that the respondent No. 2 being the Joint Secretary in the Department of Information and Publicity is avoiding his responsibility to ensure that the provisions of the Act are implemented by the Public authorities in letter and spirit. The respondent No. 2 being the Joint Secretary in the Department of Information and Publicity at Government level as also head of Department at the field level, is responsible for implementing the Act and coordinating with all Public authorities. It is the duty of the respondent No. 2 to co-ordinate and monitor with all the various Public authorities to ensure the compliances of the mandatory provisions of the Act. It is not clear if he has complied with the mandatory

requirements in respect of his own Department. Even after so many months after the Act has come into force, very few department have complied with the mandatory provisions of section 4(1) (b) due to lack of coordination. With all the constraints of lack of staff, Computers etc. the commission has not only put on the website, its orders but has also prepared the Information under section 4(1) (b) of the Act in less than 3 weeks of moving into its office.

15. The respondent No. 2 has not at all made reference in his affidavit to the point No. 3 of the summons regarding the steps taken by the respondent No. 2 to comply with the provisions of section 4(3) and (4) of the Act.

16. As regards the para 5 of the affidavit, the Commission has not directed the respondent No 2 to file an affidavit as regards the steps taken prior to the constitution of the Commission, as they are not at all relevant. The Commission took Judicial notice of its constitution on 2/3/06 and the appointment of State Chief Information Commissioner and the State Information Commissioner on 27/02/2006 and they had taken the oath of office on 21/03/2006. The Direction is about what action the Department has taken after the constitution of the Commission to make it function effectively..

17. In para 5 (g) of the affidavit, the respondent stated that the order dated 29/3/2006 was issued appointing the staff on deputation to the Commission. This statement of respondent No. 2 is also misleading as he has not specified or given details of the staff deputed to the Commission. The respondent No. 2 had issued 3 separate orders transferring one information Officer as Under Secretary, one Information Assistant as Section Officer and a peon. No stenographer or typist was provided to the Commission nor even one computer/ manual typewriter was provided. For want of premises, the Under

Secretary and the peon continued to function from the Department of Information and Publicity. Though the respondent No. 2 had transferred an Information Assistant, as Section Officer vide order dated 29/3/2006, the said Section Officer has not done any work of the Commission right from the date of posting or even after knowing fully well that the Commission started functioning from Sharma Shakti Bhavan, Ground Floor, Patto, Panjim, with effect from 8/6/2006. The said Section Officer has not reported for duties at the Commission Office inspite of written instructions from the Commission. Therefore, the respondent No.2 cannot say that he has provided services of the staff to the Commission. The respondent No. 2 being the Head of the Department ought to have ensured that the Section Officer who is transferred to the Commission attends for duties of the Commission.

Though the premises at Shram Shakti Bhavan, Patto, Panjim, was allotted to the Commission on temporary basis. the premises are too inadequate and do not have the basic facilities like the urinal/ toilets/ washbasin etc. No fan is provided to the rooms where State Information Commissioner is sitting.

18. In para 5(h) of the affidavit, the respondent No. 2 had stated that a Public notice was issued on 18/4/2006 for filling up of the posts of Jr. Stenographer, LDC's, Peons and Drivers for the Commission. In this context it is pointed out that as per sub-section (6) of section 16 of the Act the rules are to be made prescribing service conditions and salary and allowances of the Officers and other employees of the commission. Therefore, it was incumbent upon the respondent No. 2 first to finalise the rules and thereafter issue the public notices in accordance with the rules. Being so, the action on the part of the respondent No. 2 issuing public notice was pre-mature and against the provisions of sub-section (6) of section 16 of the Act. The Commission had also pointed out the same in its note sent to the Chief Secretary. The Commission is not aware

of any Rules framed under this provision. In fact, the Commission had suggested that in the first instance, the staff could be appointed on deputation basis and the recruitment be done only after finalizing the service conditions in this regards.

19. In para 5 (k) of the affidavit, the respondent No. 2 had stated that the proposal had been submitted to the Government for providing funds to the Commission on 30/5/2006. The respondent No. 2 was well aware that the Act came into force with effect from 15/6/2005 and the Commission was required to be constituted under the said Act immediately thereafter. The respondent No. 2 ought to have taken all the steps like searching for premises, making provision for funds and staff etc. well in advance. Even after sending the note vide dated 31/3/2006, the respondent No. 2 did not bother to pursue certain matters with the Government Departments concerned. If the respondent No. 2 could not make proper arrangements, he could have ensured release of a lumpsum grant leaving this work to the Commission itself. In this connection, we may mention that the Government of India, DOPT sanctioned a lump sum grant of Rs. 100 lakhs soon after the constitution of the Central Information Commission. The Central Information Commission could, therefore, outsource a few essential clerical staff. This Commission did not have even this option. The Affidavit of the respondent No. 2 is silent regarding the appointment of the Secretary to the Commission, declaring the Secretary as the Head of the Department, and indenting Officer. In the absence of indenting Officers, the Commission cannot obtain any stationery and the required registers or Official Gazette from the Government printing press. The respondent No. 2 has also stated that the Commission has been provided the services of 2 Jr. Stenographers from Personnel Department. In fact, these Stenographers have been posted by the

Department of Personnel (Pets) at the request of the Commission and they have joined recently. He cannot claim credit for something not done by him. Even if the Jr. Stenographers have reported for duties, the respondent No. 2 is well aware that no computers or typewriters are provided to the Commission and in the absence of computer/ typewriter the work of the Commission is adversely affected. Therefore, it cannot be said that the respondent No. 2 has taken adequate steps to make the Commission functional.

20. In para 7 of the affidavit, the respondent No. 2 states that he has written to the GAD to provide Section Officer and Assistants on deputation basis. It is not understood as to why he has written to the GAD for posting of a Section Officer when the respondent No. 2 had already transferred on deputation the Information Assistant as Section Officer. The Commission does not require two Section Officers. The respondent No. 2 ought to have ensured that the Information Assistant transferred on deputation to this Commission as Section Officer attends the duties of the Commission, instead of writing to the GAD for posting of another Section Officer.

21. The respondent No. 2 in para 7 has stated that the Commission had started functioning from Sharma Shakti Bhavan, Ground Floor, Patto, Panjim, and has been provided with adequate furniture, telephone, stationery etc. No doubt the furniture has been provided. As regards the stationery the Commission has written to respondent No. 2 to supply of various stationery items, which are yet to be received. As regards the telephone, one instrument was sent on 19/6/2006, the day on which the affidavit was presented. The said instrument is non-functional. It was not made functional in spite of several requests and personal visits by the officials of the Commission to the office of the respondent No. 2. Since it was a showpiece in the Commission without any use the Commission had no option but to return the

instrument back to respondent No. 2. Even the postage Stamps are not yet provided making it very difficult for the commission to correspond with anybody.

22. In para 6 of the affidavit the respondent No. 2 states that the work of compiling the information of PIO's and APIO's was entrusted to Shri. V.V. Sawant, the then Information Officer, who was put in charge of the cell created under the Act but failed to do so and did not hand over the work to his sub-ordinate Officers or to the Head of the Department. Shri. V.V. Sawant was working as Information Officer under the control and direction of the respondent No. 2 and if Shri. Sawant has failed to do the work entrusted to him, it was for the respondent No. 2 to take appropriate action. The respondent No. 2 being the Head of the Department and controlling authority cannot shirk his responsibilities by pushing them to his sub-ordinates. That apart, Shri. V.V. Sawant has already been transferred on deputation basis to this Commission on 29/3/2006. Almost three months have elapsed and the respondent No. 2 should have taken immediate steps and ensured the compliance of the statutory provisions of the Act as mentioned herein above. This statement is also in contravention with para 2 of the affidavit according to which all the Public authorities have displayed the list of PIO's, APIO's and the First Appellate authorities. The Commission is not at all satisfied with the affidavit filed by the respondent No. 2 as it is a bundle of contradictions, misleading statements, if not deliberate lies.

23. In view of what has been discussed above we pass the following interim order under section 25

ORDER

1) The respondent No. 2 is directed to prepare the list of PIO's, APIO's and the First Appellate authorities designated by

the Public authorities in alphabetical order starting from Government Departments, Government Undertakings, Autonomous Bodies, Semi-Government organization, City Corporation of Panjim, Municipal Councils, Panchayats Educational Institutions etc. and notify the same in the Official Gazette in the following Performa within a period of one month from the date of the receipt of this order or by 30th July 2006 whichever earlier.

Sl. No.	Name of the Public Authority	Names & designation of APIO's with Jurisdiction.	Names & designation of PIO's with Jurisdiction.	Names & designation of the First Appellate authorities	Series No. & Date of Publication in the Official Gazette in which Notification has been Published.

2) The respondent No. 2 is directed to submit the list of Public authorities, which have: -

(a) designated and displayed APIO's, PIO's and the First Appellate authorities within statutory period.

(b) designated and displayed the list of APIO's, PIO's and the First Appellate authorities after for expiry of statutory period.

(c) The list of Public authorities which have not yet designated and displayed the list of APIO's, PIO's and the First Appellate authorities

3) The respondent No. 2 is also directed to submit the list of Public authorities which

(a) have compiled and displayed the detailed information as required by section 4(1) (b) of the Act within statutory period.

(b) Have compiled the information after the expiry of statutory period; and

(c) Have not yet compiled the information

The respondent No. 2 is directed to submit the information on or before 15/7/2006 as per the sub-paras (2) & (3).

The next hearing is fixed on 30/7/2006 at 11.00 a.m. A copy of this order along with the copy of an affidavit filed by the respondent No. 2 be sent to the complainant for filing a reply if any, by on the next date of the hearing. A copy of the order should also be sent to the C.S/Secretary (Information) for ensuring its compliance.

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

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

26-06-2006.