

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

Shri Prashant S. P. Tendolkar,
State Chief Information Commissioner

Complaint No. 36/2017/CIC

Shri Nazareth Barreto,
H. No.126,
Borda, Salcete-Goa.
Pin: 403602

..... Complainant

V/s

The Public Information Officer/
Administrator of Comunidades,
South Zone,
Margao, Salcete –Goa.
403601

..... Respondent

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Filed on: 01/12/2017

Decided on:06/09/2018

O R D E R

- 1) This order disposes the preliminary objections raise on behalf of Shri Amaro Afonso, Escrivao of Comunidade of Margao & Aquem, hereinafter referred to as “Applicant”, for joining him as the deemed PIO in the above complaint.
- 2) The facts in brief in the present proceedings are that the complainant herein sought certain information from the

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respondent PIO, in respect of comunidade of Margao and Aquem. The PIO failed to furnish the requested information within the time as stipulated u/s 7(1) and hence the complainant filed first appeal to Additional Collector-I, being the First Appellate Authority (FAA). The said first appeal was disposed by FAA directing the PIO to furnish the information

- 3) In spite of the said order of the FAA, the PIO failed to furnish the information and hence the complainant has filed the present complaint u/s 18 of The Right to Information Act 2005 (Act for short) inter alia praying for an inquiry into the matter as also for imposition of penalty u/s 20(1) and 20(2) of the Act.
- 4) On notifying Shri Kedar Naik, PIO filed his reply to the complaint on 19/04/2018. On said date the then PIO Shri Dipesh Priolkar remained present. As it was contended by the PIO that on the order of the FAA, the information was sought from applicant being the escrivao and hence as deemed PIO, he should be joined as a party to this proceedings. Accordingly applicant was notified.
- 5) In reply to the notice issued by this Commission, Applicant filed reply. In the said reply he has raised certain preliminary objections. According to him he was not a party to the first appeal before the FAA and hence arraying him directly in this complaint is not permissible and violative of the fundamental right to be heard in first appeal and resulting in violation of principles of natural justice. It is also his objection that the complainant has malafidely omitted to make him a party to first appeal and the stand that he was a deemed PIO was not taken before the FAA.

Applicant has also raised the issue regarding non availability of information as sought by the complainant. He has also referred to the sequence of litigation and personal enmity. According to him the complainant does not require any information and hence not filed any appeal and that the complainant is interested only in setting his personal enmity.

Besides, preliminary objection, applicant has raised several issues regarding the reasons for non furnishing the information, regarding the status of comunidade vis-a-vis the Act, but the same need not be considered herein as this commission will have to decide the limited issue of maintainability of this complaint against applicant.

- 6) The complainant filed his reply objecting to drop applicant on the ground that Art 88 of the code requires the escrivao to maintain the records. That failure of escrivao to provide information as directed by the Administrator and to convey reasons for non furnishing, makes him liable in present proceedings.
- 7) After considering the rival contentions in the first instance it would be necessary to consider whether the present complaint against the escrivao is maintainable. If the answer to the same lies in affirmative then only other contention would emerge, otherwise it would be redundant.
- 8) The objection as raised by Adv. Correia appearing for the applicant are four fold. Firstly that the escrivao was not joined as a party to first appeal nor he is a party in the order of FAA. That the onus to prove bonafides lies on PIO which includes APIO and hence he is not granted

opportunity to prove bonafides. That complaint is the proceedings for imposing penalty without opportunity. That there is no reply by PIO u/s 7(1) on record, stating that information is not dispensed due to the applicant.

- 9) After considering the records it is seen that the applicant was not joined as a party to the first appeal. This apparently is due to the fact that the PIO has not responded u/s 7(1) of the act and has not raised a ground that his demand was not responded by applicant, as is raised for the first time in this complaint.
- 10) This Commission while disposing bunch of complaints involving a common point, has held that a complaint without being preceded by first appeal u/s 19(1) of the act is not maintainable. This findings are based on the ratio laid down by the Hon'ble Apex Court in the case of *Chief Information Commissioner and other v/s State of Manipur*. In the said judgment the Apex Court while differentiating the scope of section (18) and (19) under the Act has held that the proceedings in a complaint only can deal with penalty.
- 11) High Court of Bombay, Goa Bench at Panaji in the case of *Shri A. A. Parulekar V/s the Goa State information Commission and other* Writ petitions No.205/2007 has held:

“11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate.”

Criminal Law mandates that before imposing any penalty he should be granted a fair opportunity to prove his bonafides.

- 12) In the present case admittedly the applicant, was not a party before the First Appellate Authority and hence if the proceedings in the nature of complaint is initiated, he shall be deprived of a valuable forum to prove his bonafies. Such an exercise would result in violation of principals of natural justice and fair play.
- 13) In the above background this Commission finds force in the contentions as raised by the applicant. The same is therefore required to be allowed.
- 14) The applicant has also raised several other issues like the nature of information, the duties of the escrivao vis-a-vis the Comunidade as also that the comunidade is not a public authority etc. This Commission refrain from giving any finding thereon. Suffice to hold that the present proceedings against the applicant, escrivao is not maintainable, as if proceeded would lead to violation of the principles of natural justice.
- 15) In the result the preliminary objections raised in the application, dated 3rd July 2018 are partly allowed. The applicant, Shri Amaro Afonso, escrivao of the Comunidade of Margao is dropped from the proceedings. Complaint to proceed against the PIO.

Notify parties.

Pronounced in open proceedings.

Sd/-
(Shri. P. S.P. Tendolkar)
Chief Information Commissioner
Goa State Information Commission
Panaji –Goa