

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No. 451/SCIC/2010

Shri Ajit L. Desai,
H.No.1226/3(old)93-A(new),
Violowado, Pansulem,
Canacona –Goa.

.... Complainant

V/s

The Chief Officer (PIO),
Canacona Municipality
At Chaudi – Canacona

.... Opponent.

Complainant in person.

Representative of the Opponent Shri Santosh Komarpant (LDC) present..

O R D E R
(16/02/2011)

1. The Complainant, Shri Ajit L. Desai, has filed the present Complaint praying that Respondent be directed to provide the said information; that Respondent be directed to compensate for the loss and other detriments suffered and for imposing penalty under section 20 of the RTI Act.

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

That the Complainant had delivered a complaint dated 14/04/2010 to the Chief Officer of Canacona Municipality for demolition of compound wall illegally constructed by his neighbour Kusta Pandu Desai, in front of his new house at Voilowado, Pansulem, Canacona, encroaching the public road in survey No 266/4 and thereby obstructing smooth flow of the traffic and for causing public nuisance by permanently blocking the traditional centuries old pathway. That vide application dated 13/04/2010, the Complainant sought certain information Under Right to Information Act ('RTI' Act for short) from the Respondent /Opponent/Public Information Officer(PIO). That the opponent did not provide the said information within 30 days i.e. 13/05/2010. That the complainant therefore visited the office of the opponent on 14/05/2010 and he was asked by the staff that information was not ready and the complainant to visit the office in the afternoon. Session. That the

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complainant again visited the office at 4.30 p.m. and he was given letter dated 14/05/2010 whereby he was requested to remain present in the office of the Opponent on 19/05/2010 at 11.00 A.M. for resolving grievances. It is the case of the Complainant that opponent/PIO has not only refused the information but also made mockery of RTI Act by issuing letter dated 14/05/2010, thereby committed breach of section 7 and section 18(C) of the RTI Act. That the complainant is entitled for information sought by him under section 6 of the RTI Act and that the opponent public information officer has whimsically, fancifully and arbitrarily deemed to have refused the information. Hence the present complainant seeking the above mentioned relief.

3. The case of the opponent is fully set out in the reply, which is on record. It is the case of the opponent that on the very same day the application was move by the Complainant to ascertain what action was taken by the opponent on his application, which was also dated the same day. That the question of providing information within 30 days did not arise at all as there was no time in-between the complaint made and the application moved by the complainant under the Right to Information. It is the case of the opponent that reply was given to the complainant in the response to his application dated 13/04/21010 to remain present on 19/05/2010 for resolving grievances. The opponent denies that Opponent has refused the information to the complainant. Opponent also denies about mockery, breach of RTI provisions etc. It is however, the case of the Opponent that the procedure prescribed under Goa Municipalities Act for taking action against illegal construction. No action can be taken against illegal construction by the Chief Officer without following the procedure of law. That it is not known how the complainant imagines. That the Respondent has to take action against illegal construction at the very same moment when the application was moved and that this is because simultaneously the application was moved by the complainant under RTI. According to the opponent complainant is not entitled for the relief and that complainant is to be dismissed.

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4. The complainant also filed complaint for contempt of proceeding protest application written argument as well as application to ensure parity and equality before law. And also final written argument which are on record.

Shri Somnath Komarpant representative of the opponent was present and he submitted that the opponent did not want to file any argument and he relied on the reply filed.

5. I have carefully gone through the records of the case and also considered the written arguments as well as reply of the opponent. The point that arises for my consideration is whether the relief prayed is to be granted or not. It is seen that complainant vide his application dated 13/4/2010 sought certain information from the opponent. The information sought was about action taken by Canacona Municipal Council in respect of his complaint dated 13/04/2010 against the said Kusta Pandu Desai. It is seen from the records that on 13/04/2010 the complainant has filed his complaint against illegal construction of compound wall in front of the house by Kusta Pandu Dessai. Under RTI the complainant wanted to know what action was taken by Canacona Municipal Council in respect of the said complaint. It is seen that by letter dated 14/05/2010 the Complainant was requested to remain present in the office of opponent on 19/05/2010 at 11.00 A.M. for resolving the grievance. It is seen in the said letter, It is mentioned sub:-' Application under Right to Information Act' however it appears that no reply was given or sent in reply to the application. Thereafter the present Complaint is filed. Admittedly no information is furnished within the statutory period. It is seen that many applications have been filed such as (1) Application to ensure parity (2) protest application (3) Regarding contempt etc reply is also on record. No doubt Public Information Officer has to remain present. Representative of PIO must produce authority letter. These things are within the knowledge of PIO and he should strictly adhere to the same. However I need not address to the same herein in detail. It is to be noted that any violation of RTI Act is to be dealt with within the parameters of RTI Act and at the appropriate stage.

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6. It is pertinent to note that RTI Act is general is a time bound programme between the administration and the citizen requesting information and every step will have to be completed within the time for presentation of request and disposal of the same, presentation of First Appeal and disposal by the Appellate authority.

7. Now it is to be seen whether there is delay. Apparently there is delay. I have perused showcause notice etc produced on record. In any case PIO/Opponent should be given an opportunity to explain the same in the factual matrix of this case.

8. There is no proper reply to the request on record. The reply ought to have been given the way the same were asked. Normally under RTI. PIO shall provide information in the form in which it is sought. Request for information dated 13/04/2010 has not been answered the way it should have been. Under RTI Act information would mean any material in existence and apparently it cannot mean and include something that is not in existence or has to be created.

In any case PIO will have to furnish the said information.

9. In the instant case the complainant has chosen to file the complaint under section 18(c) without approaching the First Appellate Authority. In any case this complaint is entertained. However it is to be noted that First Appeal is to be preferred complaint lies only under conditions mentioned in sec 18.

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

ORDER

Complaint is allowed. The opponent/PIO is hereby directed to furnish the information to the Complainant vide his application dated 13/04/2010 within 15 days from the date of receipt of this order.

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Issue notice under section 20(1) of the RTI Act to opponent/PIO to show cause why penalty action should not be taken against him for causing delay in furnishing the information. The explanation, if any, should reach the Commission on or before 18/03/2011. The Opponent/Public Information Officer shall appear for hearing.

Further inquiry posted on 18/03/2011 at 10.30 am.

The complaint is accordingly disposed off.

Pronounced in the Commission on this 16th day of February, 2011.

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

