

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 419/SCIC/2010

Shri Gamelin Fernandes,
H. No.66/6,
Pomburpa, Arao,
Bardez – Goa

... Complainant.

V/s.

1) Public Information Officer,
Office of the District Magistrate,
North Goa District,
Magisterial Branch,
Panaji – Goa

... Opponent No. 1.

2) Mr. Michael J. Fernandes,
H. No.84/6, Pomburpa,
Arao, Bardez – Goa

Complaint alongwith Adv. R. Almeida.
Opponent No. 1 in person.

O R D E R
(25.04.2011)

1. The Complainant, Shri Gamelin Fernandes, has filed the present Complaint praying that the Opponent be directed to furnish proper and accurate information as stated in the application dated 24.02.2010.

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

That the Complainant moved an application dated 24.02.2010 seeking certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (P.I.O.)/Opponent. That the Opponent vide letter dated 04.03.2010 forwarded a letter to Michael J. Fernandes and sought for his say as to whether he has any objection if the information was furnished to the Complainant. That vide letter dated 19.03.2010 addressed to the Complainant, the Opponent informed that the document sought by the Complainant pertains to third party who has objected it from disclosure on the

ground of personal enemy. That the Opponent failed/refrained from providing the required information to the Complainant. That the Opponent lost sight of the fact that the information requested are public documents and the same are maintained in public records. Being aggrieved the Complainant has filed the present Complaint on the grounds as set out in the Complaint.

3. The case of the Opponent is set out in the reply which is on record. In short, it is the case of the Opponent that the application seeking information was filed by the Complainant and as the information pertained to third party as mentioned above, and that concerned third party namely Michael J. Fernandes was informed about the same and his objection if any was invited. That the third party objected the disclosure of the information on the ground that the Complainant is his personal enemy and that Opponent took decision not to disclose the same and communicated to the Complainant. That the Complaint is not maintainable. That the Appeal ought to have been preferred. According to the Opponent Complaint is liable to be dismissed.

4. It is seen that third party was joined in these proceedings however he remained absent. Various opportunities were given but he did not attend nor filed any reply.

5. Heard the arguments. Adv. S. Palkar argued on behalf of the Complainant. He referred to the facts of the case in detail. According to him Michael is the brother of the Complainant and he is not a third party. According to him public has a right to scrutinize the documents.

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

It is seen that the Complainant, vide application dated 24.02.2010 sought certain information from the Opponent. The information is about gun licence issued to Michael J. Fernandes and about documents submitted by him. Since information was about third party the same was brought to the notice of third party by letter dated 04.03.2010. It is seen that third party objected by letter which is on record. As per the same he states that documents should not be given to the Complainant as he is personal enemy. By letter dated 19.03.2010 this was informed to the Complainant.

The main contention of the Complainant is that documents sought are public documents and that neither party could be considered as third party.

It is to be noted here that under section 2(n) "third party" means a person other than the citizen making a request for information and includes a Public Authority. Third party information is not defined in the Act. Section 11(1) states where the PIO intends to disclose any information or record, or part thereof, on a request made under this Act which relates to or has been supplied by a third party and has been treated as confidential by that third party, the P.I.O. shall give a notice to third party of his intention to disclose the same. Thus the Act has given some protection to third party to make representation whether he opts to make an objection to the proposed disclosure by P.I.O. Every information of trade or commercial activities of third party available with public Authority is 'third party information'. It is to be noted that mere objection by third party for disclosure is not enough. However, information falling in the public domain must

be supplied. That correspondence between two public authorities fall in public domain and thus can be furnished.

7. The Complainant has also produced certain documents. Letter dated 06.12.2010 from one Mrs. Maria Lobo, H. No. 68/B6, Arao Pomburpa, Bardez under R.T.I. The information sought is copies of documents submitted by one Michael Fernandes at the time of submitting his application for gun licence; copies of all reports directives from all authorities concerned in the recommendation/approval of the gun licence to Michael Fernandes and copy of gun licence with notings. The Dy. Collector (DRO)/PIO, North Goa District, Panaji by letter dated 12.01.2010, informed as under:-

"..... you are informed that the licence of Shri Michael Fernandes is not available in this office as the same is in the custody of him. As regards to other documents, you are requested to visit this office on any working days during office hours to inspect the file/documents and see whether they meet your requirements (as some of these documents are Xerox copies). Accordingly, this office may issue the same."

Another application is dated 01.02.2011 however reply of the same, etc. is not produced. Receipt of Rs.44/- dated 15.02.2011 is also produced.

This shows that similar information was furnished. In the case before me the same is not furnished as third party objected. If the said information could be furnished to the Complainant then the same can be furnished to the Complainant before me. Besides, third party did not appear nor objected though this Commission gave various opportunities to him. Section 11 does not give a third party a veto power to refuse disclosing information. It only gives third

party an opportunity to put forth his view or voice objection to disclose information.

8. In the case before me the P.I.O. has not justified the refusal of information under any exemptions under section 8(1) of the R.T.I. Act. Hence refusal is bad under R.T.I. Act. Under the circumstances the information sought is liable to be furnished.

9. Regarding maintainability of the Complaint. In the factual backdrop of this case this Complaint is not maintainable. The Complainant ought to have filed the First Appeal. However, since much time has passed I am disposing the Complaint. R.T.I. Act is a people friendly Act and in true spirit of the R.T.I. Act I have proceeded with the Complaint. However, the Complainant to note that in future such things would not be entertained.

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

ORDER

The Complaint is allowed and the Opponent is hereby directed to furnish the information to the Complainant as sought by him in his application dated 24.02.2010 within twenty days from the receipt of this Order and report compliance.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 25th day of April, 2011.

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

