

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 182/SCIC/2010

Mr. Lavu Sitaram Karekar,
R/o. H. No. 171/1, Halarnwada,
Ecoxim,
Bardez - Goa

.... Complainant.

V/s.

Public Information Officer,
Office of Mamlatdar,
Mapusa,
Bardez -Goa

.... Opponent.

Adv. R. Almeida for the Complainant.

Mr. R. Mayenkar, representative of the Opponent.

J U D G M E N T **(17.08.2011)**

1. The Complainant, Shri Lavu Sitaram Karekar, has filed the present Complaint praying for a direction for initiating inquiry; for directing the Respondent/Opponent to furnish correct and accurate information as stated in the application dated 29.09.2009 and that action under section 20 of the Right to Information Act, 2005.

2. The brief facts leading to the present Complaint are as under:-
That the Complainant, vide application dated 29.09.2009, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer(PIO)/Opponent. That the Complainant sought copy of Wakalatnama of Shri Prabhakar Sitaram Karekar in case bearing No. MBR/CI-II/I LL/07 before the Mamlatdar of Bardez-Goa. That the Respondent vide reply dated 21.10.2009 informed that the documents sought i.e. Wakalatnama is not available in the file. That the Complainant believes that he has not been given information or access to information under the RTI Act. That considering the Opponent's reply dated 21.10.2009 the Complainant is constrained to approach this Commission for redressal of grievance and proper inquiry. It is further the case of the

Complainant that objective of RTI Act is to secure access to information under the control of Public Authorities in order to promote transparency and accountability in the working of every Public Authority. That the act of evading information to the Complainant by the Opponent due to non-availability of file/record in the office tantamounts to defiance of the very purpose of the RTI Act, 2005 and hence the present Complaint.

3. The Opponent resists the Complaint and the reply of the Opponent is on record. In short it is the case of the Opponent that the Complainant has filed an application dated 29.09.2009 for obtaining certified copies of notices sent to Prabhakar Sitaram Karekar and Wajradhar Monu Halarnker and their office vide letter dated 21.10.2009 has already issued copies of the information sought by the Appellant, however, Appellant has preferred the present Complaint. That the reply which is enclosed to the copy of the Complaint issued to the Opponent is not the reply issued by the Opponent in respect to the application dated 29.09.2009 to the Complaint but the Complainant has very conveniently misguided the Hon'ble Commission by enclosing the copy of the reply which is issued to the other application dated 29.09.2009 filed by the same Complainant. It is further the case of the Opponent that the Opponent has on one earlier occasion issued the same copy which has been sought by the present Complainant and the Complainant vide his letter dated 29.07.2009 inwarded in the office of the Opponent under No. 8977 has admitted having received the copies of the documents against which the present Complaint has been filed. That the complaint is bad in law as the Complainant was having remedy of filing the Appeal before the Appellate Authority as provided under the RTI Act and that the Complaint is not maintainable. That the present Complaint is a clear act of misleading the Hon'ble Commission by enclosing wrong documents and has been filed only to harass the PIO and is an act of wasting of the valuable time of the Commission as well as of PIO. According to the Opponent the Complaint is liable

to be dismissed. The application for production of documents has been filed by the Complainant alongwith affidavit. In the said application the Complainant states that the reply produced by the Complainant to the Complaint made before the Commission is that of letter dated 29.09.2009 produced at Sr. No. (a) and that the letter dated 29.09.2009 upon which Complainant relies and is enclosed was never replied to by the Opponent nor information was furnished. That the Complainant due to inadvertent mistake annexed the reply to the Complaint.

4. It is seen that the Complainant was absent most of the time, however, he was represented by Advocate. Initially advocate appeared, however at one stage he was absent. Various opportunities were given to the Complainant. However, he remained absent. So I am proceeding on the basis of record. The Opponent has filed written arguments which are on record.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the information is furnished and whether the same is in time.

It is seen that, vide application dated 29.09.2009, the Complainant sought certain information as under:-

- (1) Certified copy of notice sent to Shri Prabhaker Sitaram Karekar at the time of commencement of above case.
- (2) Certified copy of notice sent to Shri Vajradhar Monu Halarnker at the time of commencement of above case.

It is the case of the Complainant that by reply dated 21.10.2009 the Opponent replied that the document sought i.e. Wakalatnama is not available in the file. That the Complainant believes that he has not been given information or access to information under RTI.

According to the Opponent the Complainant had filed 3 separate applications dated 29.09.2009 seeking information. I have perused all the three applications on record. That vide three separate replies dated 21.10.2009 the Opponent has answered all the three applications and copies of reply are also produced. As per reply dated 21.10.2009 copy of notice issued to Shri Vajradhar Monu Halarnker dated 08.10.2009 is furnished and it was also informed that copy of notice issued to Prabhaker Karekar is not available in the file. I have also perused the application for production of additional documents. It also speaks of three applications. Three replies are also produced by the Opponent.

It appears that information is furnished and the same is furnished in time. It is seen that one notice is not available. It is to be noted here that under RTI whatever information available in the material form is to be furnished. There is no obligation to furnish non-existent information.

6. Now it is to be seen whether the Complaint is maintainable. Under section 18(1) of the Act the Complaint may be filed if –

- (a) the Complainant is unable to submit application for information because no Public Information Officer has been designated by the public authority;
- (b) the Public Information Officer or Assistant Public Information Officer refuses to accept the application for information;
- (c) the Complainant has been refused access to any information requested under the Act;
- (d) the Complainant does not receive response from the Public Information Officer within the specified time limit;
- (e) the Complainant has been required to pay an amount of fee of which is unreasonable, and
- (f) the Complainant believes that he has been given incomplete, misleading or false information; and

in respect of any other matter relating requesting or obtaining access to the record under the Act.

In the instant case the Opponent has furnished the reply. Normally the remedy lies of First Appeal. I have perused some of the rulings of Central Information Commission where the Commission refused to accept appeals in cases where First Appeal was not preferred and the Commission has advised the Appellant therein to first file an appeal before the First Appellate Authority. In any case the Complainant to take note of the same.

7. In view of all the above, since information is furnished no intervention of this Commission is required. Hence, I pass the following Order:-

ORDER

No intervention of this Commission is required. The Complaint is disposed off.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 17th day of August, 2011.

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

