

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Complaint No. 615/SCIC/2010

Smt. Nurjahan Bi,
H. No. 41,
Alishan Mahal, Naga Masjid,
Ponda – Goa

... Complainant.

V/s

Public Information Officer,
Ponda Municipal Council,
Ponda – Goa

... Opponent.

Shri Mulla A. Muzawar, representative of the Complainant.
Adv. Shri S. S. Pilgaonkar for Opponent.

O R D E R

(28.09.2011)

1. The Complainant, Smt. Nurjahan Bi, has filed the present Complaint praying that the Opponent be imposed with heavy penalty as he has deliberately avoided to furnish the required information/certified copies called for and the Respondent be directed to furnish free of cost the certified copies applied for by the Complainant.

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

That the Complainant filed an application seeking certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (PIO)/Opponent. That the Opponent by reply dated 07.06.2010 informed that the application is rejected as it is covered under the provisions of Section 8(1) (h) of the RTI Act. That the Complainant preferred the Appeal before the Appellate Authority, namely, Directorate of Urban Development at Panaji. That by Order dated 02.07.2010 the said Appeal was allowed. That the Opponent preferred the Appeal before this Commission however, the said Appeal was dismissed by the Commission by its order dated 09.11.2010. That inspite of the disposal of the Complaint the Respondent did not furnish the copies of the record called for by the Complainant and hence the present Complaint.

3. The Opponent has filed the written statements which are on record. It is the case of the Opponent that the Complaint is misconceived, incompetent, untenable and bad in law and hence is liable to be dismissed. That after the disposal of the Appeal before the Commissioner, Respondent vide letter dated 21.01.2011 called upon the Appellant to collect the certified copies of the documents as requested by her vide her application. That the query at Sr. No. (c) was also answered in the said letter. That the Appellant vide letter of authority dated 27.01.2011 had appointed one Mr. Mulla Afzal Muzawar to collect the copies. That the said Shri Mulla Afzal Muzawar approached the office of the Respondent on 01.02.2011 and collected all the copies and he has also endorsed having received all the copies. That the Complaint in general, is filed with malafide intention and liable to be dismissed. According to the Opponent the complaint be dismissed with exemplary costs.

4. Affidavit of Shri Mulla Afzal Muzawar is on record. Written statements/reply to the said affidavit is also on record.

5. Heard the arguments. Shri Mulla A. Sattar, representative of the Complainant argued on behalf of the Complainant. Learned Adv. Shri S. S. Pilgaonkar argued on behalf of the Opponent.

Shri Mulla referred to the facts of the case in detail. According to him authorized person has just signed however some information has not been furnished. He next submitted that consequent upon the Order of this Commission the reply is not in time and consequently there is delay. According to him penalty ought to be imposed for such delay.

During the course of his arguments Adv. Shri S. S. Pilgaonkar submitted that basically Complaint is filed stating that no information is furnished. According to the Complaint no information has been furnished but in fact all information has been furnished and Shri Mulla Afzal Muzawar who is a builder by profession has collected the information and has duly signed in token of having received the information. He also referred to the affidavit of said Shri Mulla Afzal Muzawar and submitted that nowhere in the affidavit he states that he visited many times in the office. He also submitted that said Mulla A. Muzawar is a relative of the Complainant. According to Advocate for Opponent affidavit of Mulla A. Muzawar was not filed alongwith Complaint

and that Affidavit is an afterthought. In short, according to him information is fully furnished and that the same was furnished in time.

In reply Shri Mulla A. Sattar referred to the facts on record. According to him Order was passed by the Commission on 09.11.2010. Complaint was filed on 25.12.2010 and till then no information was furnished. On 24.01.2011 letter was received to collect the documents after a period of two months and on 01.02.2011 the representative of the Complainant received the copies however some information was not furnished. According to him there is delay of two months and twelve days.

6. 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 relief prayed is to be granted or not?

It is seen that the Complainant, vide application dated 07.05.2010 sought certain information from the Opponent. By reply dated 07.06.2010 the Opponent informed the Complainant that the information sought is covered under the provisions of Section 8(1) (h) of the RTI Act and hence the application stands rejected. This reply is in time. Being aggrieved the Complainant preferred an Appeal before the F.A.A. By Order dated 02.07.2010 the F.A.A. directed the Opponent herein to make the information available to the Appellant in response to her letter dated 07.05.2010 within a period of 15 days from the date of Order, i.e. 02.07.2010 without charging fees. It appears that the P.I.O. preferred Complaint/Appeal before the commission and the same was disposed/dismissed on 09.11.2010. It is the case of the Complainant that no information was given though Complaint/Appeal was disposed/dismissed.

According to Opponent by letter dated 21.01.2011 the Opponent called upon the Complainant to collect the information and her representative Shri Mulla Afzal Muzawar collected all the copies.

In short according to the Opponent all information has been furnished. Whereas according to the Complainant item at Sr. No. (c) is not furnished.

6. Elaborate arguments from Complainant's side and also of Opponent's side were heard. Affidavit of Mulla A. Muzawar is on record and I have perused the same. I have also perused the register brought by Opponent and relevant entry. I need not refer to all these. If according to Opponent all information is furnished then there is no harm in furnishing information to item

at Sr. No. (c) i.e. “Whether all the Fixed Deposit amounts shown in the receipts are reflected in the Cash Book.” again. It is also not the case of Opponent that information at (c) is prohibited/exempted, etc. Besides, First Appellate Authority has ordered to provide the same.

7. Coming to the aspect of delay. The request is dated 07.05.2010 as per application produced by Complainant the same was received by Ponda Municipal Council on 10.05.2010. The reply given is dated 07.06.2010. The same is in time. Good or bad the reply has legal bearing so it cannot be said that there is delay. The Order of F.A.A. was to give within 15 days, however, this Order was challenged before this Commission and the matter was disposed by Order dated 09.11.2010. It is possible that some time was taken to receive the copy. In any case, at least within 15 days from the receipt of the copy the information ought to have been furnished. However, Opponent took some time. From the factual backdrop of this case it is not possible to hold that the same is intentional or deliberate. At the most it can be said that the same is due to lack of proper appreciation of the provisions of the RTI Act. In any case benefit on this count is to be given to the Opponent. Shri Mulla, representative of the Complainant also does not press for the same.

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

ORDER

Complaint is partly allowed. The Public Information Officer/Opponent is hereby directed to furnish information to item No. (c) i.e.. “Whether all the Fixed Deposit amounts shown in the receipts are reflected in the cash book.” to the Complainant (vide application dated 07.05.2010) within 15 days from the receipt of this Order and report compliance.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 28th day of September, 2011.

Sd/-
(M. S. Keny)
State Information Commission

