

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.559/SIC/2010

Shri Ashok L. Dessai,
R/o.309, 3rd Floor,
Damodar Phase – 2,
Near Margao Police Station,
Margao-Goa

... Complainant

V/s.

1. The Public Information Officer,
The Chief Officer,
Canacona Municipality
At Chaudi, Canacona

2. The Asst. Public Information Officer,
The Market Inspector cum Head Clerk,
Canacona Municipality,
At Chaudi-Canacona

... Opponent

Complainant present

Opponent No.1 & 2 absent.

Shri D. Komarpant representative of Opponent No.1 present.

ORDER
(16/01/2012)

1. The Complainant, Shri Ashok L. Dessai, has filed the present complaint praying that Opponent No.1/P.I.O be directed to provide the said information sought by application dated 09/09/2010 in respect of compound wall of Survey No.264/13 and 264/14; that P.I.O. be directed to compensate for the loss and other detriments suffered for prosecuting his application before opponent and this Commission and that penalty shall be imposed on opponent/P.I.O. under Sec.20 of R.T.I. Act for not supplying information.

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

That the complainant had delivered a complaint dated 9/9/2010 to the office of Public Information Officer of the Canacona Municipality for providing the information in respect of the compound wall illegally constructed by the owner of the plot of Survey No.264/13 at the southern border encroaching the Government road of Survey No.266/4 at Voilowado of Pansulem village of Canacona Taluka. That the complainant had also delivered another complaint dated 9/9/2010 to the office of Public Information Officer (P.I.O.) of Canacona Municipality for providing the information in respect of compound wall illegally constructed by the owner of the plot of Survey No.264/14 at Western border near the electric pole No.CMC-73 encroaching the government road of Survey No.266/4 at Voilowado of Pansulem village of Canacona Taluka. That the opponent/P.I.O. did not provide complainant the information sought by him within 30 days i.e.9/10/2010. That the complainant along with his brother visited the office of the opponent on 11/10/2010, however, opponents were not in the office and they waited till 4.00 pm. That when information was asked the opponent No.2 stated that the same is sent by post. When asked to give the opponent No.2 stated that he could not provide and to collect the same as mentioned in the letter. However till filing of the complaint no letter was received. That it transpired that letter was not at all sent. That the opponents conspired to be-fool and harass the Complainant. That the P.I.O. has not only refused him the information but also exhibited the scant respect to the provisions of R.T.I. Act. That the complainant is entitled for information under sec.6 of the R.T.I. Act and hence the present complaint praying the above mentioned reliefs.

3. The opponent No.1 resists the complaint and the reply of the opponent No.1 is on record. It is the case of the opponent No.1 that the reply was sent to the complainant within the prescribed time. The Opponent No.1 denies the case of the Complainant as set out in the complaint. That there was no question of furnishing any further information in view of the reply given to the complainant by the opponent. That if any such alleged fact had taken place then

nothing prevented the complainant to place the grievances before opponent No.1 whenever he was available in the office before filing the present complaint. However, the complainant did not approach the opponent No.1 and hence it appears that the said facts did not take place at all. That the Complainant did not approach the P.I.O./Opponent No.1. It is further the case of the opponent No.1 that the reply was sent by normal post and hence the acknowledgement is not available with the opponent. That the reply was sent by Registered post. The opponent No.1 denies that the reply was never sent to the Complainant. The opponent No.1 denies that opponent has refused the complainant information called for.

In short it is the case of the opponent No.1 that the reply was sent in time.

4. Heard the arguments of the parties.

Adv. Shri A. Dessai narrated the facts of the case in detail. According to him information is not furnished within statutory period. He narrated in detail as to how he went etc in detail.

According to opponent information is furnished. That the same was sent by post.

Written arguments of the Complainant as well as of opponent No.1 are on record. Written clarification of the complainant are also 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 was in time.

It is seen that the complainant sought information vide two applications dated 9/9/2010. Both the applications were received

on 9/9/2010. However no reply was furnished. According to the complainant he went to the office of opponent and asked for the information and opponent No.2 told him that the letter was sent to collect and to collect the same as per the letter. According to opponent No.1 information was sent by post.

The complainant categorically states that no information is provided and opponent No.1 vehemently states that the same has been posted. In his reply opponent No.1 states that reply was sent by normal post and hence acknowledgement is not available with the opponent and further states that since the reply was not sent by registered post, there is no acknowledgement available and hence it could be construed that the same was not received by the Complainant. However in his written arguments filed on 7/9/2011 opponent No.1 states that the said reply was posted to the Complainant under certificate of posting on 11/10/2010 and the records of the postal authorities carrying the seal of the post is produced.

Again it is to be noted here that there were two applications and the reply produced refers only to one.

Considering the rival contentions the matter needs some inquiry.

Again according to the complainant information was furnished only in the Commission.

6. Again it is to be seen whether there is delay. Admittedly there is delay in the sense application is dated 9/9/2010 and the reply is posted on 11/10/2010. According to the complainant information was not at all furnished to him. But the information was given in the commission along with the arguments. Besides there is no reply to the other application. Complainant next submits that even if the said reply is considered the same is misleading and incomplete. In any case to my mind P.I.O. must be given an

opportunity to explain about the same in the factual backdrop of this case.

7. Regarding misleading and incomplete information the complainant has to establish the same. The purpose of R.T.I. Act is per se to furnish information. Of course Complainant has a right to establish that information furnished to him is false, incorrect, misleading etc but the complainant has to prove it to counter opponent's claim. The information seeker must feel that he got the true and correct information otherwise purpose of R.T.I. Act would be defeated. It is pertinent to note that mandate of R.T.I. Act is to provide information – information correct to the core and it is for the appellant to establish that what he has received is false, incorrect etc. The approach of the Commission is to attenuate the area of secrecy as much as possible. With this view in mind, I am of the opinion that the complainant must be given an opportunity to substantiate that the information given to him is incomplete, incorrect, false etc. as provided in Section 18(1)(e) of the R.T.I. Act.

8. Coming to the aspect of information. According to the complainant information has not been furnished to him. What he received is from records of the case i.e. the proceedings of the case in the Commission. In any case the information was posted or not, whether there was delay or not and whether what is produced in court is misleading, false etc. will have to be established. However, without prejudice to the rights of the parties, the opponent P.I.O. can furnish the information. Hence I pass the following order

ORDER

The complaint is allowed. The opponent is hereby directed to furnish the information to the Complainant as sought by him vide his applications dated 9/9/2010 and 9/9/2010 within 15 days from the date of receipt of this order.

Issue notice U/s.20(1) of R.T.I. Act to the opponent No.1/Public Information Officer to show cause why penal action should not be taken against him for causing delay in furnishing information. The explanation if any should reach the Commission on or before **21/02/2012**. The Public Information Officer/opponent shall appear for hearing.

The complainant to prove that information furnished is false, misleading, incorrect etc.

Further inquiry posted on **21/02/2012** at **10.30 a.m..**

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 16th day of January, 2012.

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