

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.43/SCIC/2011

Shri Vishwas Gopinath Naik,
R/o.Ghanemorod,
Xeldem, Quepem-Goa

... Complainant

V/s.

Shri Vithal K. S. Audienkar,
Head Master
Smt. Chandrabhaga Tukoba Naik High School,
Curcholem-Goa

... Opponent

Complainant absent
Opponent present.
Adv. S. Nayak for opponent present.

ORDER
(13/02/2012)

1. The Complainant, Shri Vishwas G. Naik, has filed the present complaint praying that legal action in terms of Sec.20 may be initiated against the respondent.

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

That the complainant vide his application dated 8/10/2010 sought certain information under Right to Information Act, 2005 ('R.T.I.' Act for short) from the opponent/Public Information Officer('P.I.O.'). That in response the opponent furnished the information sought at item 1 to 6 vide his letter dated 3/11/2010. But the information at item 7 to 13 though existed and same was within knowledge and power of the opponent, the opponent did not furnish the same. That the opponent in his reply on page 2 gave a false and incorrect information which reads as "The interview procedure of appointment of primary teacher has been completed and the same has been kept pending in view of the court order

dated 19/4/2010 in connection with Special Civil Suit No.12/2010/A". That thereafter the complainant in continuation of his aforesaid letter further sought information second time vide letter dated 13/1/2011 and in response thereto the respondent furnished the information vide his letter dated 10/2/2011. It is the case of the complainant that on perusal of the said information it is disclosed that the information sought vide his earlier aforesaid letter dated 8/10/2010 was existing and the same was within knowledge and power of the opponent and inspite of the same, the opponent knowingly and intentionally gave a false and incorrect information to the complainant, attracting Section 20 of the Act. Hence the present complaint.

3. The opponent resists the complaint and the reply of the opponent is on record. It is the case of the opponent that the complaint of the complainant, being not maintainable at law is devoid of any substance and therefore deserves dismissal at the outset. That the grievance of the Complainant does not fall under the provisions of the R.T.I. Act. That the complainant who is an advocate has filed the present complaint on behalf of and for his niece Miss Sonali Nagu Dessai who has also instituted a civil suit No.10/2011/A in the Court of C.J.S.D. at Quempem. That the Hon'ble court at Quepem has declined to grant any relief to Sonali Dessai. Incidentally Shri Vishwas G. Naik who is the complainant in the present case is advocate on record in the said suit appearing for Miss Sonali Dessai. That the complaint is absolutely frivolous and deserves dismissal. That the opponent furnished information at item No.1 to 6 of the application dated 8/10/2010. That the opponent did not furnish the information from para 7 to 13 of the said application in view of the order dated 19/4/2010 in special civil suit bearing No.12/2010/A pending before C.J.S.D. at Quepem. However the opponent vide reply dated 3/11/2010 wrote to the complainant that the interview procedure of appointment of primary teachers has been completed and the same has been kept pending in view of the Court order dated 19/04/2010 in connection with the said suit. The opponent denies that the false and

incorrect information was given. The opponent stated that the complainant asked for the information second time vide letter dated 13/1/2011 and that the reply was given on 10/2/2011. That the opponent denies that the opponent intentionally gave incorrect and false information to the complainant. It is the case of the opponent that the opponent furnished the information in respect of item No.1 to 4. However, in respect of item No.5, opponent requested from Director of Education, the advice/guidance whether to furnish information in respect of marks allotted and the Dy. Director of Education sent his reply dated 8/3/2011. According to the opponent there is no cause of action for the present complaint and the complaint is liable to be dismissed.

4. Heard Shri B. Herekar Advocate for the opponent. The complainant did not remain present. Various opportunities were given to him but he did not care to remain present. In any case I am proceeding on the basis of record.

During the course of his arguments the learned Adv. Shri B. Hereker submitted that first application is dated 8/10/2010 and the second application is 13/1/2011. He also submitted that reply is in time. He referred to court order stay etc. He submitted that both the replies were given in time. In short according to him full information is furnished.

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 in time.

It is seen that the complainant, vide application dated 8/10/2010 sought certain information consisting of 13 items i.e. Sr.1 to 13. By reply dated 03/11/2010 the opponent furnished the information. It is seen that information was furnished in respect of item at Sr. 1 to 6. Regarding 7 to 13 it was stated that interview procedure of appointment of primary teacher has been completed

and the same has been kept pending in view of court order dated 19/4/2010 in connection with Special Civil Suit No. 12/2010/A. This reply is in time.

By another application dated 13/1/2010 the complainant sought information in respect of 7 items at Sr. No.1 and 7. By reply dated 10/2/2011 the opponent furnished the information. This is also in time.

6. The main grievance of the complainant appears to be that information at item No.7 to 13 though existed and same was within the knowledge and power of the respondent/opponent. The respondent/opponent did not furnish the same and that gave false and incorrect information. The Complainant states that thereafter he filed another application dated 13/1/2011 and in response thereto the opponent furnished the information vide his letter dated 10/2/2011. In short information sought by application dated 8/10/2010 was existing but P.I.O. gave false and incorrect information.

From the complaint it appears that there is no dispute regarding item No.1 to 6 of the application dated 8/10/2010. Secondly there is no dispute regarding application dated 13/1/2011. The only grievance is points at Sr. No.7 to 13.

Regarding 7 to 13 the P.I.O. states as under :-

“(i) The interview procedure of appointment of primary teacher has been completed and the same been kept pending in view of Court order dated 19/4/2010 in Civil Suit No. 12/2010/A.

The P.I.O./Opponent vide his reply has produced the relevant order. As per the cause title of the suit. Defendant No.6 is Vishwas Gopinath Naik. It is seen that some defendants has sought some adjournments and the following order was passed :-

“No objection for adjournment provided the defendants who have filed this application undertake (a) not to hold any meeting of Managing Committee of defendant No.29 society and (b) not to carry out any financial transaction till application for temporary injunction is disposed off.”

Accordingly adjournment was granted.

Sec.8 of the R.T.I. Act lays down as under :-

“8 Exemption from disclosure of Information :- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

(a)

(b) Information which has been expressly forbidden to be published by any court of law or Tribunal or the disclosure of which may constitute contempt of Court;

(c)”

This provision enables to achieve an objective that different law agencies do not work against each other. It is pertinent to note that where the matter is sub-judice only and no order is passed by any Court/Tribunal forbidding publication thereof, the information can be disclosed under sec.8(1)(b). Similarly, where the disclosure does not constitute contempt of court or violate the directions made by the court, the information can be allowed to be furnished.

The only exemption in sub-judice matter is regarding what has been expressly forbidden from disclosure by a Court or a Tribunal and what may constitute contempt of Court.

Now the information sought vide application 8/10/2010 was denied in view of the order. However according to the complainant in subsequent application dated 13/1/2011 information was furnished. However it is not known when the said order was vacated etc. In any case at the relevant time good or bad there was an order of the Court and it is no wonder that information was not

given because of the order. In fact P.I.O./Opponent has clearly stated as “The interview procedure of appointment of primary teachers has been completed and the same has been kept pending in view of court order dated 19/4/2010 in connection with special Civil Suit No.12/2010/A”. This itself shows that procedure is completed, however, the same is kept pending in view of the order. Therefore it cannot be said false and misleading information is given. Even otherwise to my mind benefit is to be given to the P.I.O. in view of the court order.

7. During the hearing it was confirmed from the opponent about the order of the Court and it was stated that the said order of the Court is no more there. In view of this, the opponent/P.I.O. can very well furnish the information.

8. In view of all the above, I pass the following order

ORDER

The complaint is partly allowed. The opponent is hereby directed to furnish the information to the Complainant in respect of point No.7 to 13 as per the application dated 8/10/2010 within 20 days from the date of receipt of this order.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 13th day of February, 2012.

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