

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.03/SIC/2011

Shri Gerald D'Souza,
C/o.AMF,
H. No.178, Bairo Alto,
Assagao, Bardez - Goa

... Complainant

V/s.

The Public Information Officer /
The Administrator of Comunidade,,
North Zone,
Mapusa, Bardez – Goa

... Opponent

Complainant absent
Opponent absent
Adv. K. H. Bhosale for the opponent.

ORDER
(16/07/2012)

1. The Complainant, Shri Gerald D'Souza, has filed the present complaint praying that the P.I.O. be directed to furnish the information sought for by the said complainant vide his application dated 29/11/2012 and that the P.I.O. be directed to pay a sum of Rs.250/- per day with effect from 29/11/2011 till date in terms of Sec.20 of the R.T.I. Act.

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

That the Complainant, vide his application dated 29/11/2010, sought certain information under Right to Information Act, 2005 ('R.T.I.' Act for short) from the Public Information Officer(P.I.O.)/Opponent. That though 30 days have elapsed, the complainant is yet to hear in the matter. That the

opponent failed to respond to the request. Being aggrieved the complainant has filed 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 had sought certain information under application dated 29/11/2010 which was in furtherance to his application dated 5/10/2010. That he was promptly informed vide letter dated 7/10/2010 that the said information is not available in this office and as such the assistance of Registrar/Attorney of Comunidade of Assagao been sought under Sec.5(4) of the R.T.I. Act since the same pertains to the Comunidade of Assagao. That under Article 88(a), (b) each Comunidade maintains its records and at initial stage of the allotments of the plots, the same file moves up and down for verification, inspection, approval of various authorities and allotment etc. and when it comes to the final stage of handing over final possession the record is maintained in the office of this P.I.O. That the information sought by the applicant/complainant pertains to the initial process of the allotment of plots by inspecting, verifying, eligibility and approval at different stages and as such respective files moves up and down before the various authorities and as such no record is available in the office of this P.I.O. and only after final possession to be granted entire data is recorded in completion of granting of the respective plot/plots. That on 4/11/2010 Comunidade de Assagao furnished the information with regards the temporary allotment of the 46 plots by specifying the number of the plots, names of the applicant/allotees etc. That on 8/11/2010 the complainant/applicant filed another application on the said subject alleging the action of Shri Anand S. Naik, Acting Secretary, Assistant P.I.O. The action taken by Assistant State Public Information Officer is to provide required information within time and as such it is to be appreciated because receipt of the information is most important to the applicant rather than any modalities and formalities. That on 22/11/2010 the complainant/applicant was informed about the receipt of the information from the Comunidade of Assagao

which is being forwarded to him. That the applicant once again filed an application on the same subject on 29/11/2010 with a request to issue him the certified copies of all the documents furnished by each of the allottees of 46 plots in Survey No.158/8 which belonged to the Comunidade of Assagao. That subsequently he was requested to visit the office and inspect the relevant files and take extracts/copies of the necessary documents. That the complainant/applicant directly preferred this complaint although he was already in receipt of the required information. That it is very evident, that the efforts taken by the opponent to provide necessary information in time which is in good faith and as such be viewed in the proper prospective and under Sec.21 of the R.T.I. Act, 2005. According to the opponent penalty clause is not applicable as the information supplied in good faith comes under the protection of Sec.21 of R.T.I. Act and requests to dispose off the complaint accordingly.'

4. Heard the arguments on behalf of complainant and of Adv. Shri K.H. Bhosale for opponent.

According to the complainant information is with the opponent. Whereas according to Adv. Shri Bhosale the said information is not with the opponent.

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 relief prayed is to be granted or not ?

It is seen that by application dated 29/11/2010, the Complainant sought certain information. According to the complainant no information was furnished. Nothing is produced on record in respect of information furnished though according to the reply filed by the opponent information is furnished. In the reply the opponent states as under :-

“..... The applicant, once again filed an application on the same subject on 29/11/2010 with a request to issue him the certified copies of all the documents furnished by each of the allottees of 46 plots in survey No.158/8 which belonged to Comunidade of Assagao. Subsequently he was requested to visit the office and inspect the relevant files and take extracts/copies of the necessary documents.”

To my mind the complainant can do so. The opponent on their part also can furnish the information.

6. Now coming to the aspect of delay. Looking at the facts of the case there is delay in responding. However I am not inclined to issue show cause. Firstly because it has been held by the Hon'ble High Court of Judicature at Bombay (Goa Bench) that complaint directly is not maintainable. The Hon'ble Supreme Court has also held the same. Normally First Appeal is to be preferred one cannot skip Sec.19 and come under Sec.18. The Hon'ble High Court has also held that if complaint is not maintainable penalty levied is also not maintainable.

Normally the complainant ought to have been directed to file the appeal before the First Appellate Authority. However in view of the reply filed the opponent could furnish the information.

In case still there is delay the complainant can agitate/press for the penalty.

8. In view of the above, I am of the opinion that the information which is not furnished is to be furnished to the complainant. Hence I pass the following order :-

ORDER

The Complaint is allowed. The opponent is hereby directed to furnish the information as sought by the Complainant vide his application dated 29/11/2010 within 30 days from the receipt of this order.

The opponent to give the inspection of records/relevant files to the complainant on a mutually agreed date but within Ten(10) days from the receipt of the order and thereafter on inspection the information be furnished as specified by him. The whole process to be completed within 30 days.

The complaint is accordingly disposed off.

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

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