

GOA INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Penalty case No. 04/2008 In
Complaint No: 08/2008

Shri Kashinath Shetye,
Bambino Building, Alto Fondvem,
Ribandar, Tiswadi – Goa.

..... Complainant

V/s.

The Public Information Officer,
The Vice Principal / Sr. Most Lecturer,
V. M. Salgaonkar College of Law,
Miramar, Panaji – Goa.

..... Opponent

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per G. G. Kambli)

Dated: 11/09/2008.

JUDGMENT

The Penalty proceedings have been initiated against the Opponent under section 20 of the Right to Information Act, 2005 (for short the Act) for not compliance with the orders of this Commission. The detail facts of the case have been discussed in the order dated 16/07/2008 of the Commission passed in Complaint No. 08/2008-09. However, the facts are reiterated in brief in order to appreciate the matter in its proper prospective.

2. The Complainant herein sought the information from the Opponent by 2 separate applications both dated 08/04/2008. The Opponent directed the Complainant to produce the proof of its resident and photo identity to ensure that the Complainant is a genuine citizen of India. It is against this communication of the Opponent, the Complainant filed the Complaint before this Commission. The Complaint was fixed for hearing on 17/06/2008 on which date both the Complainant and Opponent remained present in person. Both the parties were also heard. The Opponent had sent his reply by post instead of presenting it on the date of hearing. The Opponent did not contest the Complainant and agreed to provide the information to the Complainant. The Commission had passed the

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following order on 17/06/2008, which was announced in the open Court.

“Complainant present in person. Opponent is also present in person. Opponent had sent a reply by post. Copy of which is given to the Complainant. Heard both the parties. Complainant submitted that he sought certain information from the Opponent and the Opponent has asked the Complainant to produce the documents stating that he is genuine citizen. The Opponent clarified that what he meant is to ascertain the identity of the Complainant and not citizenship order. He further submitted that he has already instructed his staff to keep the information ready and he is willing to provide the information to Complainant on production of identity. He undertook to supply the information to the Complainant on payment of the prescribed fees within two weeks and submit the compliance report to the Commission on 2/7/2008 at 11.00 a.m. The complaint stands, therefore, disposed off accordingly. ”

3. In terms of the aforesaid order of the Commission, the Opponent was directed to submit the Compliance Report to the commission on 02/07/2008 at 11.00 a.m. On 02/07/2008 the Complainant remained present but the Opponent choose to remain absent and did not file any compliance report. The Complainant made the grievances stating that the Opponent did not provide the complete information even though directed by the Commission. Hence, the Complainant was asked to file his written reply along with the copy of information provided by the Opponent on 08/07/2008 at 11.00 a.m. Accordingly, the Complainant filed his reply along with the copy of the reply dated 23/06/2008 given by the Opponent to the Complainant. The Commission thereafter passed an order on 16/07/2008 giving direction to the Opponent to provide the remaining information to the Complainant within one week from the date of the order and submit the compliance report on 23/07/2008 at 11.00 a.m. The Opponent was also directed to show cause as to why the penalty of Rs.250/- per day delay should not be imposed on him in terms of provisions of section 20 of the Act.

4. On 23/07/2008 the Complainant as well as the Opponent remained present. The Opponent filed a copy of the reply which given to the Complainant. Both the parties were heard and the matter was posted for orders on 13/08/2008. On 13/08/2008 the Complainant was present.

Mrs. M. F. Britto, Assistant Public Information Officer remained present on behalf of the Opponent. The order was passed giving one more opportunity to the Opponent to provide the remaining information to the Complainant within a week's time on collecting the necessary fees and file the compliance report to this Commission on 20/08/2008 at 11.00 a.m. along with the reply to the show cause notice contained in the order dated 16/07/2008. On 20/08/2008 the Opponent again remained absent. The Complainant submitted that the Opponent has not provided the complete information to the Complainant. The Complainant was directed to file the details as regard to the information provided and yet to be provided by the Opponent. The matter was fixed for hearing on 27/08/2008. Here again, the Opponent has submitted his compliance report by post instead of presenting it in the open court. The Complainant has also filed an affidavit stating that the Opponent did not provide the complete information in spite of visiting the office of the Opponent. In the compliance report, the Opponent submitted that the Opponent was unable to supply the information earlier to the Complainant since the Complainant did not approach the Opponent though the Opponent has informed him on 23/06/2008 that the information was ready and he could come and collect the same. The Opponent further alleged that the Commission asked the Opponent only to file the copy of reply of the letter issued to the Complaint to collect the information and did not insist to file the reply to show cause notice since the Opponent attended the hearing personally. This is not the correct position. The Opponent did not file any reply to the show cause notice as contained in the order dated 16/07/2008. It is surprising that the Opponent has filed a copy of the letter dated 23/06/2008 which was already produced before this Commission by the Complainant.

5. On perusal of the said letter, it was clear that the Opponent did not provide the complete information to the Complainant and hence the Complainant was given one more opportunity to comply with the order of the Commission within week's time. In the reply filed by the Opponent to the show cause notice, the Opponent submitted that there is a violation of fundamental rights of the Opponent as to the right to be heard, as the Opponent did not receive any direction to submit the compliance report to the Commission. The Opponent has made a false statement. The order

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dated 17/06/2008 was pronounced in the open Court in the presence of the Opponent as well of the Complainant and the Opponent was given clear direction by the Commission to provide the information within two weeks and file the Compliance Report on 02/07/2008. An ample opportunity was given to the Opponent to file his reply and he was also given an opportunity of being heard. The Opponent also submitted that he has not denied the information to the Complainant but asked the Complainant to collect the same.

6. In reply to the show cause notice, the Opponent has alleged that his fundamental right has been violated. However, he has not explained in what manner his fundamental right has been violated inasmuch as the Opponent was given several opportunities to provide the information and submit the compliance report as well as to file the reply to the show cause notice. The Opponent has stated that he personally submitted the reply to the show cause notice on 23/07/2008 which is not a correct statement. What the Opponent did is that he filed only a copy of the letter dated 23/06/2008 issued to the Complainant by the Opponent. The Commission had asked the Opponent to submit a copy of this letter in addition to the reply to the show cause notice. The Opponent has alleged that he did not receive any direction to submit compliance report to this Commission or to appear before this Commission. This is a totally false statement made by the Opponent. On 17/06/2008, the Opponent was directed to provide the information to the Complainant within two weeks and file his compliance report on 2/07/2008 at 11.00 a.m. This order was pronounced in the open court and the direction was given in the open court. Therefore, it does not lie in the mouth of the Opponent that the Commission did not give any direction to the Opponent to submit the compliance report and appear before this Commission. The Opponent ought to have remained present on 2/07/2008 and file the compliance report but the Opponent choose to remain absent and now alleging that the Commission did not give any such direction. The Opponent has now attached a copy of the notice dated 23/07/2008. It is not understood as to how the said so called reply is styled as notice by the Opponent. The Opponent further alleges that he has not refused the information to the Complainant but shown his willingness to provide the same. The Opponent further stated that he received the order dated 16/07/2008 of the Commission only on

23/07/2008. In this context, the Opponent should note that it is not necessary for the Commission to issue notice of each and every hearing as the hearings are fixed in the open court in the presence of the parties and no fresh notices are sent to the parties. It is the duty of the parties to remain present before this Commission as and when the matter is fixed for hearing. In this case, we have also noticed that the Opponent has sent the replies by post which is not correct procedure. If any reply has to be filed, it should be filed in the open court when the case is called out. The Commission cannot enter into the correspondence with the parties as the Commission is deciding the matters in quasi-judicial capacity.

7. Be that as it may, the Opponent till the date of the last hearing i.e. on 27/08/2008 did not provide the complete information to the Complainant. It is seen from the compliance report sent by post by the Opponent, the information regarding details of full time and part time faculty was given to the Complainant on 20/08/2008 when the information was to be provided within two weeks from 17/06/2008. Further, the Opponent till date has not provided following information on points No. 2 and 3 of the application dated 8/4/2008: -

"2. The marks allotted to students of Fifth Year LLB (Hons) in Practical Papers I, II, III and IV for the past 2 years with their respective break-up;

3. The marks allotted to students of Third Year LLB (Degree) in Practical Papers I, II, III and IV for the past 2 years with their respective break-up."

8. Infact, when the Opponent appeared before this Commission on 17/06/2008, he undertook to provide the information to the Complainant. He also made a statement before this Commission that he instructed his staff to keep the information ready. In the reply filed by the Opponent, the Opponent stated "the Opponent is ready and willing to supply information if the Complainant approaches the Respondent with his identity". The Opponent did not express any difficulty nor claimed any exemption for the disclosure of the information to the Complainant and hence, the Commission ordered the Opponent to provide the information to the Complainant within 2 weeks. The Opponent provided only part of the information vide his reply dated 23/06/2008. The Opponent further

provided part of the information on 20/08/2008 and the Opponent has not yet provided the information on the above two points regarding the marks allotted to the students. This clearly establishes that the Opponent did not comply with the provisions of section 7 of the Act which contemplates that the information has to be provided as expeditiously as possible but within 30 days. It is also to be noted that the Opponent directed the Complainant to prove his identity that he is the genuine citizen of India. We have not heard of any two categories of citizen like citizen and genuine citizen. The Opponent should note that any person can seek the information under the Act as per section 6 of the Act and he is not required to furnish any details other than particulars of the information sought and the details to contact him/her. The information seekers is not requires to furnish any reasons for requesting the information or any other personal details. Being so, the Opponent was wrong in directing the Complainant to produce his identity and proof that the Complainant is a genuine citizen of India.

9. The Commission had given a direction to the Opponent to provide the information within 2 weeks vide order dated 17/06/2008 i.e. on or before 01/07/2008 and file the compliance on 2/7/2008. The Opponent was further given an opportunity by order dated 16/07/2008 to provide remaining information to the Complainant within one week. Here again, the Opponent has failed to provide the complete information to the Complainant. Only part of the information has been provided on 20/08/2008. If the information could be provided in part to the Complainant by the Opponent, we fail to understand as to why the complete information could not be provided to the Complainant on 23/06/2008 itself. The Opponent has also failed to provide the information inspite of the further orders by the Commission. Therefore, the conduct and the attitude of the Opponent does not appear to be bonafide. If the Opponent was really and genuinely interested in giving information, the Opponent could have very well provided the same at the first instance and did not wait for the Commission to pass several orders giving direction to the Opponent to provide the information and file compliance report. The Opponent did not submit the compliance report before this Commission that he has provided the complete and correct information in response to both the applications of the Complainant. The Opponent took the matter

very lightly and casually. We are, therefore, not satisfied with the reply filed by the Opponent as well as the compliance report filed by the Opponent. The Opponent has sent a letter dated 30/08/2008 enclosing therewith a copy of the letter dated 30/08/2008 addressed to the Complainant by post. The Commission cannot take the cognizance of such letter when the matter was already heard on 27/08/2008 and posted for orders on 11/09/2008. Hence, the Commission ignores the said letter of the Opponent.

10. It will be seen from the above, the Opponent did not provide the complete information to the Complainant within the time limit contemplated under section 7 of the Act nor within the time limit given by the Commission. The Commission had directed the Opponent to provide the information on or before 1/7/2008. Till the last date of the hearing, no proof has been produced by the Opponent to prove that he has provided the complete information to the Complainant. Therefore, there is an inordinate unexplained delay of 58 days on expiry of 2 weeks from the date of order dated 17/06/2008 of the Commission. The delay has not been explained to the satisfaction of the Commission and on the contrary the Opponent has made a false statement in his reply to the show cause notice.

11. During the hearing, the Complainant submitted that he should be provided information free of cost as provided in sub-section (6) of section 7 of the Act. This Commission has already held a view in number of cases that the provision of the sub-section (6) of section 7 of the Act applies only in cases falling under section 7(5) of the Act. Therefore, the Complainant is not entitled to the information free of cost even though it is provided beyond the time limit provided in sub-section (6) of section 7 of the Act. Hence, his request is rejected.

12. In view of what has been discussed above, we pass the following order: -

ORDER

The Opponent has caused inordinate unexplained delay of 58 days and the penalty at the rate of Rs.250/- per day delay comes to Rs.14,500/-. However, since this is the first case which has come to the

notice of the Commission of the Opponent, the Commission takes the lenient view and impose a nominal penalty of Rs.2000/- only. The Opponent is directed to pay this penalty of Rs.2000/- within 15 days from the date of the order. In the event the Opponent fails to pay the penalty within the time limit specified in this order, we direct the Principal of the said college to deduct the penalty of Rs.2000/- from the salary of the Opponent for the month of October, 2008. A copy of the order also be sent to the Director of Higher Education for information and the Principal of the College.

Pronounced in the open court on this 11th day of September, 2008.

Sd/-
(G. G. Kambli)
State Information Commissioner

Sd/-
(A. Venkataratnam)
State Chief Information Commissioner