

GOA STATE INFORMATION COMMISSION
Ground Floor, "Shrama Shakti Bhavan," Patto Plaza, Panaji.

Complaint/13/2008

Mr. Digamber S. Shirodkar
H. No. 778/4, Near Dr. Bhale's Hospital
Alto Porvorim
Bardez-Goa

.... Complainant

V/s.

1. The Public Information Officer
Administrator of Comunidade
O/o. the Administrator of Comunidade
North Zone
Mapusa-Goa

.... Opponent

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner

And

Shri G. G. Kambli
State Information Commissioner

(Per A. Venkataratnam)

Dated: 31.10.2008

Complainant in person.

Neither the Opponent nor his Advocate present.

Adv. B. D. Nazareth for the Attorney of Comunidade of Serula.

ORDER

The short point arises for our determination is whether the Attorney of Comunidade of Serula Shri Agnelo C. Lobo, can be treated as deemed Public Information Officer for the purposes of sub-sections (4) and (5) of Section 5 of the Right to Information Act, 2005 (for short, "The Act").

2. The facts of the case, in brief, are that the Complainant herein made an application dated 25.01.2008 u/s. 6 of the Act requesting certain information in respect of plot No. 8 of Lote No.372 surveyed under No. 390

...2/-

which was allotted to the Complainant by the Comunidade of Serula in the year 1988. The Office of the Opponent forwarded the said application of the Complainant to the Registrar of Comunidade of Serula vide memorandum dated 28.01.2008 requesting to furnish the requisite information to their Office within three days without fail. Subsequently, by another memorandum dated 25.03.2008 the Office of the Opponent again requested the Registrar of Comunidade of Serula to furnish the information within three days without fail.

3. In the meantime, Shri Agnelo C. Lobo, Attorney of the Comunidade of Serula by his letter dated 03.02.2008 requested the Complainant to approach the Office of the Comunidade of Serula alongwith the property documents in respect of temporary possession of the said plot No. 8. According to the Complainant, he visited the Office of the Comunidade of Serula on 22.02.2008 afternoon and handed over a copy of the temporary possession certificate to Mr. Vishwanath Gadkar who was available in the Office at the relevant time.

4. As the Opponent failed to provide the information within the specified time limit of thirty days as provided in section 7(1) of the Act, the Complainant preferred the first appeal before the First Appellate Authority on 20.03.2008. During the course of the hearing before the First Appellate Authority, the Assistant Public Information Officer of the Office of the Opponent handed over a true copy of the letter dated 03.04.2008 addressed by the Attorney of the Comunidade of Serula to the Acting Secretary and Assistant Public Information Officer of the Office of the Opponent alongwith a copy of the letter dated 15.02.2008 of the Attorney of Comunidade of Serula addressed to the Complainant. Accordingly, the First Appellate Authority disposed off the appeal

5. Aggrieved by the false and misleading information provided to him by the Office of the Opponent, the Complainant has filed the present complaint before this Commission. After issuing the notices, the Opponent filed reply

wherein the Opponent alleged that the receipts produced by the Complainant are forged and, therefore, the Commission directed the Opponent to produce the Cash Books and the original Receipt Books. Accordingly, the Cash Books and Receipt Books were produced and it was verified that the Comunidade of Serula had, in fact, received the foros paid by Complainant and the same were reflected in the Cash Book as well as in the Receipt Book. An interim order was passed and a notice was also issued to Shri Agnelo C. Lobo, Attorney of the Comunidade of Serula to show cause as to why he should not be treated as a Public Information Officer in terms of provisions of sub-section (4) and (5) of the section 5 of the Act for providing misleading and false information thereby contravening the provisions of the Act. Shri Agnelo C. Lobo, through his Advocate, Shri B. D. Nazareth, filed a reply. Adv. Nazareth also appeared on behalf of Shri Agnelo C. Lobo and argued the matter. On the day of the hearing of arguments on 24.01.2008, neither the Opponent nor his Advocate was present. Adv. Nazareth argued the matter on behalf of Shri Agnelo C. Lobo.

6. Shri B. D. Nazareth, the Ld. Advocate for Shri Lobo submitted that the Attorney of the Comunidade of Serula has no powers to correspond as he is not the custodian of the records. However, he did not explain as to how and why he actually corresponded not only with the Complainant but also with the Opponent on behalf of the Comunidade of Serula if he is not authorized to do so. He further contended that the records of the Comunidade are always with the Registrar (Escrivao) and he is the custodian of records. He pointed out that the Opponent did not seek the assistance of the Attorney of the Comunidade of Serula but sought the assistance of the Registrar. He further contended that the Attorney of the Comunidade is elected person where no qualifications are prescribed and he is not a Government employee nor he has been paid any remuneration or salary and, therefore, he submitted that the Attorney of the Comunidade cannot be treated as a Public Information Officer. Lastly, he submitted that since no assistance was sought by the Opponent from the Attorney of the

Comunidade, the Attorney of the Comunidade cannot be treated as Public Information Officer and the Attorney has bonafidely given the reply. The information provided by the Attorney of the Comunidade of Serula is a nullity and, therefore, it should be ignored.

7. It is admitted position that the Office of the Opponent sought the information from the Registrar (Escrivao) of the Comunidade of Serula and the Attorney of the Comunidade of Serula sent a reply alongwith the information to the Office of the Opponent No.1. In fact, the Attorney of the Comunidade of Serula Shri Agnelo C. Lobo ought not to have provided the said reply to the Office of the Opponent since according to him he is not competent to do so under the Code of Comunidade. Similarly, the Opponent ought to have insisted that the Registrar to submit the information sought by the Complainant to the Office of the Opponent. The Registrar (Escrivao) did not respond to the memoranda issued by the Office of the Opponent and the Office of the Opponent has handed over the true copies of the letters issued by the Attorney of the Comunidade of Serula to the Complainant which admittedly appears to be false and misleading. We, therefore, agree with the Ld. Advocate for Shri Lobo, Attorney of Comunidade that Shri Lobo, Attorney, cannot be treated as Public Information Officer in terms of section 5(4) and (5) of the Act.

8. This Commission has held in several cases that information has to be provided by the Public Information Officer and not by any other official. In the present case, the Public Information Officer has not yet furnished the information to the Complainant. It is also worth mentioning here that in the reply filed by the Opponent, the Opponent has stated that the documents produced by the Complainant are forged and that the Complainant approached this Commission with forged documents and malafide intention to acquire the plot which is reverted back by influx of time. We have not understood on what basis the Opponent has made these serious allegations against the Complainant. Since Advocate B. D. Nazareth has contended that the information provided by the Attorney of the Comunidade of Serula is a

nullity and should be ignored, we have to treat that the Opponent has not yet provided the information to the Complainant as per the provisions of section 7 of the Act. The Opponent has totally ignored the provisions of section 7 of the Act and has failed to provide the information to the Complainant in accordance and with the spirit of the Act. The Opponent has not acted diligently and acted with a malafide intention inasmuch as the Opponent has made a very wild and serious allegation against the Complainant alleging that the Complainant has approached this Commission with forged documents.

9. Therefore, we hereby direct the Opponent to provide the correct and complete information to the Complainant within one week from the date of this order and show cause as to why penal action for imposition of penalties and recommending disciplinary action should not be taken against him in terms of provisions of section 20 of the Act. The Opponent is directed to file his reply on 05.12.2008 at 11:00 am.

Pronounced in the open Court on this 31st day of October, 2008.

Sd/-
(A. VENKATARATNAM)
STATE CHIEF INFORMATION COMMISSIONER

Sd/-
(G. G. KAMBLI)
STATE INFORMATION COMMISSIONER

