

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

Complaint No. 35/SIC/2008

Shri Vijay Bhat Gaonkar  
H. No. 576, Panchami  
Khandepar  
Ponda-Goa

...Complainant

V/s.

The Public Information Officer  
Mamlatdar  
Ponda Taluka  
Ponda – Goa

...Opponent

**CORAM:**  
**Shri G. G. Kambli**  
**State Information Commissioner**

**(Per G. G. Kambli)**

**Dated: 24.11.2008**

**Shri Waman G. Kuttikar, Advocate for the Complainant.**

**Advocate Rodrigues Maria Lourdes for the Opponent.**

**J U D G M E N T**

The present complaint filed under section 18 of the Right to Information Act, 2005, (for short "The Act") is directed against the Opponent wherein the Complainant has prayed that the Opponent be directed to furnish the requisite information forthwith and the Complainant may be compensated by imposing a fine of Rs. 250/- per day upon the Opponent.

2. According to the Complainant, the facts of the case, in brief, are that the Complainant approached the Opponent with a request dated 02.04.2008 to furnish the information/status report pertaining to mutation case No.

...2/-

MUT/ENT/12/80 in respect of survey No. 86/2 of Village Khandepar. As the Complainant did not receive any response from the Opponent, the Complainant filed the appeal before the First Appellate Authority on 03.06.2008. The First Appellate Authority by his judgment and order dated 17.07.2008 partly allowed the appeal and directed the Opponent to furnish the requisite information within thirty days from the order.

3. The Complainant states that inspite of the order of the First Appellate Authority, the Opponent did not provide the information and hence, the present complaint.

4. Upon issuing the notices, the Opponent filed a reply. When the matter was fixed for hearing for arguments on 14.11.2008, the Learned Advocate for the Complainant moved an application objecting for the appearance of the Advocate on behalf of the Opponent. The arguments of both, the Learned Advocates for the Complainant as well as the Opponent were heard on merits as well as on the application dated 14.11.2008 filed by the Advocate for the Complainant.

5. In the reply filed by the Opponent, the Opponent has submitted that similar application was made by Adv. Shri Waman G. Kuttikar on behalf of Smt. Premavati Fondu Bhat Gaonkar, widow of late Fondu Bhat Gaonkar, seeking same information from the Sarpanch/Secretary of the Village Panchayat of Curti, Khandepar under the Act vide application dated 12.12.2007. The said application of Adv. Waman G. Kuttikar was transferred to the Opponent by the Public Information Officer of Curti KhandeparPanchayat vide letter dated 13.12.2007 under intimation to Adv. Shri Waman G. Kuttikar. On receipt of the said application from the Public Information Officer of Village Panchayat Curti Khandeparkar, the Opponent vide memorandum dated 26.12.2007 forwarded a copy of the application of Adv. Waman G. Kuttikar to the Talathi of Curti Khandeparkar with a direction to furnish the details of the said mutation case No.

MUT/ENT/12/80 alongwith latest certified copy of Form I and XIV of survey No. 86/2 of Khandeparkar Village. On receipt of the information from the Talathi, the Opponent vide his letter dated 07.01.2008 informed Adv. Waman G. Kuttikar that the documents sought by him are ready and he may collect the same on any working day during office hours from his office. A copy of the said letter was also endorsed to the Public Information Officer of Village Panchayat Curti Khandeparkar. The Opponent further submitted that inspite of the said intimation, Adv. Waman G. Kuttikar did not collect the information which was kept ready.

6. Thereafter, the present Complainant moved another application dated 02.04.2008 seeking same information which was earlier sought by Adv. Waman G. Kuttikar on behalf of Smt. Premavati Fondu Bhat Gaonkar. The Opponent states that vide letter dated 23.04.2008 the Complainant was informed that the information sought by the Complainant was kept ready and the same can be collected during working days during office hours. In spite of the said intimation, the Complainant did not turn up to collect the information and on the contrary filed the appeal before the First Appellate Authority. The Opponent further alleged that the First Appellate Authority before passing of the judgment and order dated 21.07.2008 did not give any opportunity of hearing to the Opponent.

7. In order to verify the statement made by the Opponent in the reply, the Opponent was directed to produce extract of the postage registers and outward register.

8. Before I discuss the case on merits I would like to first dispose off the application dated 14.11.2008 filed by the Learned Advocate for the Complainant. The Learned Advocate for the Complainant in his said application has stated that the Advocate appointed by the Opponent to defend him before this Commission is not a Government counsel and that the Opponent, i.e. the Public Information Officer, has no authority to appoint

the Advocate of his choice to represent him in his official matters without prior sanction of the Law Department of the Government of Goa. The Learned Advocate for the Complainant has also stated that by appointing the private advocate the Opponent is misusing his power which, according to him, is ab initio void. The Learned Advocate for the Complainant in his application has not cited any provisions of the Act or any other law debarring or prohibiting the Public Information Officer to appoint private advocate.

9. The Learned Advocate for the Complainant failed to show any of the provisions of the Act or of any other law for the time being in force which debars the Public Information Officer from appointing the Advocate of his choice. I also do not find any provisions in the Act debarring the Public Information Officer from appointing private advocate of his choice. The Complainant is represented by an advocate and to deny the Public Information Officer to appoint an advocate of his choice certainly amounts to discrimination. If one party is allowed to be represented by an advocate, the other party will go undefended by any lawyer if the other party is not allowed to be represented by an advocate.

10. It is pertinent to note here that the Complainant has prayed for imposition of penalty on the Opponent, i.e. Public Information Officer. Penalty so imposed u/s. 20 of the Act is recovered from the Public Information Officer and not from Government Treasury as he is personally liable and responsible for the same. Therefore, the Public Information Officer has to defend his case as he has to pay the penalty from his own pocket. A similar point came up for consideration before this Commission in appeal No. 17/2008 and the Commission in the said appeal had allowed the Public Information Officer to appoint an advocate to defend the case and rejected the application of the Appellant wherein the Appellant raised preliminary objection for appointing an advocate by the Public Information Officer. Therefore, I do not find any merits in the application of the Learned

Advocate for the Complainant and, as such, the same is liable to be dismissed.

11. Turning now to the merits of the case, the Opponent in his reply has stated that the present Advocate who is appearing for the Complainant had sought the same information vide his letter dated 12.12.2007 on behalf of Smt. Premavati Fondu Bhat Gaonkar, the mother of the present Complainant. The said letter was addressed to the Sarpanch/Secretary of Village Panchayat Curti Khandepar which was in turn forwarded to the Opponent by the Public Information Officer of Village Panchayat Curti Khandepar under intimation to the Learned Advocate for the Complainant. The Opponent vide letter dated 07.01.2008 had informed the Learned Advocate for the Complainant that the information has been kept ready and he can collect the same during office hours on any working day. The Opponent has also produced an extract of the outward register and it is seen from the same that at Sr. No. 52 the said letter was sent to the Advocate for the Complainant on 08.01.2008. This fact has been suppressed by the Learned Advocate for the Complainant in the present appeal and, therefore, the Complainant has not come before this Commission with clean hands.

12. Coming now to the application dated 02.04.2008 of the present Complainant, the same information has been sought which was earlier sought by the Learned Advocate for the Complainant on behalf of the mother of the Complainant. The Opponent says that the Complainant was informed vide letter dated 23.04.2008 that the information sought by the Complainant was kept ready and the same can be collected on any working day during office hours. However, the Complainant did not turn up and collect the same. Instead, the Complainant filed the appeal before the First Appellate Authority. The Learned Advocate for the Complainant submitted that the Complainant did not receive these letters from the Opponent. In order to verify the same the Opponent was asked to produce an extract of the

postage register as well as the outward register of having sent the said letter to the Complainant. The same was produced by the Opponent and it can be seen at Sr. No. 841 that the said letter was posted on the same day and postage of Rs. 5/- has been spent. Similarly, the Opponent subsequently vide letter dated 18.08.2008 had also furnished the information to the Complainant and the said letter was sent under certificate of posting. In support of the same, the Opponent has also produced Xerox copy of certificate of posting and also postage register which shows that the said letter was posted to the Complainant by the Opponent. The case of the Complainant is that he has not received any of the letters from the Opponent. However, the records produced by the Opponent shows that the Opponent has posted all these letters.

13. The Learned Advocate for the Complainant contented that the Opponent did not take the plea before the First Appellate Authority about the posting of the said letters. The Opponent in his reply has stated that the First Appellate Authority did not give any opportunity to the Opponent of being heard. On perusal of the judgment and order of the First Appellate Authority, it is also not clear whether the First Appellate Authority has issued any notice to the Opponent before passing the order.

14. It will be seen from the above that the Opponent time and again had informed the Complainant as well as the Learned Advocate for the Complainant that the information sought by the Complainant was kept ready. However, the Complainant nor the Learned Advocate for the Complainant collected the same. The Complainant stated that he has not received these letters. However, in the reply filed before this Commission by the Opponent, the copies of all those letters have been annexed to the reply and the copy of the reply was also given to the Learned Advocate for the Complainant. Being so, nothing prevented the Complainant to collect the information from the Opponent atleast from the date of the receipt of the reply filed by the Opponent before this Commission.

15. The Opponent vide his letter dated 18.08.2008 has also given the information pertaining to the mutation case in respect of which the information was sought by the Complainant stating that the Talathi of Curti Khandepar has informed that no records are available in respect of the said mutation case. The Complainant has sought the information in respect of the mutation case which is of the year 1980 and more than twenty eight years have passed. In case records are not available in the office of the Talathi of Curti Khandepar, the Opponent cannot provide the same. Therefore, I do not see anything wrong on the part of the Opponent in providing the information to the Complainant vide letter dated 18.08.2008. Hence, the present complaint also deserves to be dismissed. In view of the above, I pass the following order:

**ORDER**

The application dated 14.11.2008 is hereby dismissed. So also the complaint is dismissed.

Pronounced in the open Court on this 24<sup>th</sup> day of November 2008.

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

