

GOA INFORMATION COMMISSION

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

Complaint No. 01/2008

Smt. Surekha M. Naik,
356, Porascodem,
Pernem – Goa.

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Complainant.

V/s.

1. The Public Information Officer,
The Secretary,
Gram Panchayat Khajana – Amere – Poraskode,
Tal, Pernem – Goa.
2. The Public Information Officer,
Goa State Information Commission,
Patto, Panaji – Goa.
3. The First Appellate Authority,
The Secretary,
Goa State Information Commission,
Patto, Panaji – Goa.

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Opponents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner

&

Shri G. G. Kambli
State Information Commissioner

(Per G. G. Kambli)

Dated: 30/07/2008.

Advocate Bhupesh Prabhu Desai for the Complainant.

Adv. Santosh S. Keni for the Opponent No. 1.

Opponent No. 2 in person.

Opponent No. 3 absent.

JUDGMENT

This disposes off the above Complaint filed by the complainant against the Opponents under section 18 of the Right to Information Act 2005 (for short the Act).

2. According to the Complainant, the facts of the case in brief, are that pursuant to the order dated 05/10/2007 passed by this Commission in complaint No. 26/2007 filed by the Complainant has, interalia, given the following direction:-

"So far as the inspection of file is concerned, the Opponent may follow the procedure laid down in Section 11 of the Act and take an appropriate decision in the matter and communicate the same to the Complainant within 3 weeks from the date of this order."

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3. Pursuant to the said order of the Commission, the Opponent No.1 vide his letter dated 23/10/2007 informed the Complainant that the 3rd party has filed the objection under section 11 of the Act and that the Opponent No. 1 has referred the matter to the Higher Authority for advice. By a subsequent letter dated 24/10/2007, the Opponent No. 1 has provided the information to the Complainant. However, no decision was communicated regarding the inspection of files.

4. The Complainant therefore vide her letter dated 9/11/2007 invited the attention of the Opponent No. 1 to the order passed by this Commission. In response thereof, the Opponent No. 1 on the same day informed the Complainant to visit the office of the Opponent No. 1 on 12/11/2007 at 10.00 a.m. to inspect the file. Accordingly the Complainant along with her Advocate visited the office of the Opponent No. 1. However, the Complainant alleges that the Complainant was not provided the relevant files for inspection which made the Complainant to file a complaint before this Commission being Complaint No. 50/2007-2008 in which the Opponent No. 1 filed the reply stating that the Complainant alongwith her Advocate D. P. Patnekar came to the Panchayat office and took necessary inspection of the files through the Advocate and returned home. Therefore, the Commission dismissed the Complaint of the Complainant by its order dated 15/01/2008.

5. The Complainant therefore again approached the Opponent No. 1 vide her application dated 29/01/2008 requesting to provide certified copies of the entire file as applied for an inspection given by the Opponent No. 1 to the Complainant. Another application dated 29/01/2008 was also made by the Complainant to the Public Information Officer of this Commission seeking certain information in respect of the Complaint No. 50/2007-08 disposed off by the Commission.

6. The Opponent vide reply dated 14/02/2008 informed the Complainant that word file was typed by oversight and the said word should be corrected as Registers and that the Complainant could collect the certified copy of the relevant pages of Registers on payment of fees of Rs. 20/-. Aggrieved by this reply of the Opponent No. 1, the Complainant files this Complaint praying interalia that the Opponent No. 1 be penalized, and that disciplinary proceeding be recommended against the Opponent No. 1.

7. The Opponent No. 1 and 2 have filed their replies. Opponent No. 3 remained absent.

8. The Complainant has filed a complaint against the Opponents No. 1, 2 and 3. The Opponent No. 1 and Opponent No. 2 are two different Public Information Officers and working under two different Public Authorities. Every application under the Act gives a separate cause of action. That apart, the Complainant has filed the common complaint against two different Public Information Officer who are working under two different Public Authorities. Therefore, it could have been appropriate on the part of the Complainant to file two separate Complaints against the Opponent No. 1 and second complaint against the Opponents No. 2 and 3.

9. We will now discuss the complaint against Opponent No. 1. Right from the beginning, the Complainant is seeking inspection of the files and the Opponent No. 1 has made a statement before this Commission that he made available the file for the inspection of the Complainant alongwith her advocate which led the Commission to dismiss the Complaint of the Complainant filed before this Commission. Thus, the Opponent No. 1 has made a false and misleading statement before this Commission. If the files are not available, the Opponent No. 1 ought to have made it very clear right from the beginning and not to make the Complainant to run from pillar to post. We therefore fully agree with the learned Advocate for the Complainant that the Opponent no. 1 has made false and misleading statement before this Commission in Complaint No. 50/2007-08 as a result of which the Complainant has been put to much hardship and inconveniences. In fact, this is a fit case to award compensation to the Complainant. However, this being a complaint under section 18 of the Act, the Commission is unable to award any compensation, in view of the stay granted by the Hon'ble High Court in Writ Petition No. 326/2007 (Shri. Eknath Talkar V/s. Goa State Information Commission).

10. The Opponent No. 1 was directed by this Commission to take the decision regarding the inspection of files within 3 weeks after following the procedure laid down in section 11 of the Act. Instead of taking the decision as directed by the Commission, the Opponent No. 1 referred the matter to higher Authority for advise. The Opponent No. 1 being the Public Information Officer under the Act is functioning in quasi- judicial capacity and he is not expected to seek advise from any authority. Hence, the Opponent No. 1 has not complied with the order of this Commission.

11. Coming now to the other prayers of the Complainant for imposition of

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penalty and recommending disciplinary action we are satisfied that the Opponent No. 1 has not acted diligently and properly in dealing with the application of the Complainant seeking information. The Opponent No. 1 ought to have been careful in dealing with the application and not to give misleading and false information. Had the Opponent No. 1 has stated at the initial stage that the files do not exist the whole matter would have ended there itself. On account of the false and misleading information given by the Opponent No. 1, the Complainant has to file the present complaint. Hence, we have no other option but to impose penalty of Rs. 2000/- on the Opponent No. 1 by taking a lenient view. We are not inclined to agree with the other prayer of the Complainant to recommend disciplinary proceeding against the Opponent No. 1

12. This takes us to the complaint against the Opponents No. 2 and 3. The Complainant sought the following information from the Opponent No. 2 under the Act: -

1. Detail copy of the Roznama in the case/complaint No. 50/2007-08/GP.
2. Copy of directions issued to the Complainant for filing affidavit and/or leading evidence.
3. Copy of the procedure followed by leading evidence?
4. Which procedural law is followed by the Commission for deducing the truth? By procedural law I mean Civil Procedural Code, Criminal Procedure Code, Evidence Act, or any other law for time being in force.
5. What is a difference between a complaint and appeal?
6. What is difference between an appeal (First) and Second appeal?
7. Why was the Opponent not directed to produce the file before the Commission?

13. The Opponent No. 3 vide his letter dated 15/02/2008 informed the Complainant that the post of the Under Secretary-cum-Registrar is vacant and that the application will be placed before the Public Information Officer as soon as the Government appoints the substitute. Subsequently, the Opponent No. 2 informed the Complainant vide letter dated 14/03/2008 that the Complainant can collect the information on payment of Rs.4/- regarding the roznama in complaint No. 50/2007-08. As regards the request contained at Sr. Nos. 2 and 3, the Opponent No. 2 informed that the same cannot be disclosed being intellectual property rights and the other information sought by the Complainant are not information but query. The Complainant again addressed one more letter dated 19th March, 2008 to the Opponent No. 2.

14. The Complainant has filed the complaint without exhausting the remedy of first appeal available under section 19(1) of the Act. During the course of the arguments, the learned Advocate for the Complainant contended that the Complainant has prayed for imposition of penalty against the Opponents No. 2 and 3 and therefore, he has filed the present complaint. In support, the learned Advocate for the Complainant relied upon the judgment and order dated 05/10/2007 in Complaint No. 26/2007. In this connection, it is to be noted that the facts of the said complaint are different from the facts of the present complaint. In the present complaint, the Opponent No. 2 rejected the request of the Complainant. Therefore, the proper course would have been to file first appeal under sub-section (1) of section 19 of the Act. The provisions of section 18 of the Act are subject to the provision of section 19(1) of the Act. The provisions of section 18 are general in nature and the provisions of section 19(1) are special provisions. It is no doubt that the first Appellate Authority has no powers to impose the penalty on the Public Information Officer. Merely making a statement in a complaint and praying for the imposition of penalty does not give any right to a citizen to file the complaint. The citizen can very well approach the Commission in a second appeal even for imposition of penalties under section 20 of the Act. Since the Complainant has not filed the first appeal as contemplated in sub-section (1) of section 19 of the Act and the provisions of section 18 are subject to the provisions of section 19(1) of the Act, the present complaint itself is not maintainable. Therefore, on this count alone, the complaint of the Complainant against the Opponents No. 2 and 3 is liable to be dismissed. However, we would like to proceed and decide the application of the Complainant made to the Opponent No. 2 on merits.

15. On perusal of the request dated 29/01/2008 of the Complainant addressed to the Opponent No. 2, it is seen that except the information on point No. 1, the information sought on points No. 2 to 6 is in the nature of advice/opinion which is outside the scope of the Act. At point No. 7, the Complainant sought the reasons from the Opponent No. 2 which also does not fall within the purview of the Act as held by the Hon'ble High Court of Bombay, Goa Bench in Writ Petition No. 419/2007 (Celsa Pinto V/s. Milan G. Natekar & other). Therefore, the information sought by the Complainant at points No. 2 to 7 do not fall within term information as defined in section 2(f) of the Act. The Opponent No. 2 rejected the request of the Complainant on the grounds that the information sought by the Complainant is intellectual property rights and information sought is in the form of query. We do not find any request of the

Complainant seeking information relating to the third party which could be considered as intellectual property rights and hence, the rejection of information by the Opponent No. 2 on this ground was not proper. Similarly, the Opponent No. 2 was also wrong in rejecting the request of the Complainant stating that the information is sought in the form of query. It is only to be seen whether the information sought in the form of query amount to seeking opinion or advice or reasons only in such cases the information can be denied and not simply because the information is sought in the form of query. Hence, we hereby quash and set aside the rejection letter of the Opponent No. 2. However, since the Complainant has sought the information in the form of opinions/advice and reasons, we reject the same for the reasons explained above.

17. So far as the letter dated 15/02/2008 of the Opponent No. 3 is concerned, it is a fact that the post of Under Secretary-cum-Registrar who was designated as the Public Information Officer has been lying vacant for more than one year. It is not within the competence of this Commission to make appointment to the post of Under Secretary-cum-Registrar. The Commission has taken up the matter with the Government followed by several reminders to appoint the Under Secretary-cum-Registrar of the Commission, but there is no response from the Government even though more than one year is elapsed. There is no other Gazetted Officer in the Commission besides Secretary who could be designated as Public Information Officer. Therefore, in order not to cause any hardships or inconveniences to the public, the Commission designated the Section Officer as a Public Information Officer so that the applications received under the Act can be disposed off. Being so, the Complainant cannot make any grievances against this Commission. If at all there are any grievances regarding the non-appointment of the Under Secretary-cum-Registrar, the Complainant is free to approach the Government.

18. In the result, we pass the following order: -

ORDER

The complaint against the Opponents No. 2 and 3 is rejected. The complaint against the Opponent No. 1 is partly allowed. A penalty of Rs.2000/- is imposed against the Opponent No. 1 for providing the false and misleading information. It should be recovered from the salary of the Opponent No. 1 for the month of August and September, 2008 and submit the compliance report to this Commission by 15th October, 2008. The prayer of the Complainant to

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recommend disciplinary proceedings against the Opponent No. 1 is rejected. The Commission cannot also award any compensation to Complainant in view of the reasons explained hereinabove.

Pronounced in the open court, on this 30th day of July, 2008.

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

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