

GOA STATE INFORMATION COMMISSION AT PANAJI

CORAM: Shri Afonso Araujo, State Information Commissioner

Complaint No. 58/SCIC/2008

Shri Ronnie Rodrigues,
R/o H No 1774, Town Planning Colony,
Alto – Betim, Porvorim,
Bardez – Goa – 403 521.

..... Complainant.

V/s.

The Public Information Officer,
The Commissioner,
Corporation of City of Panaji,
Panaji - Goa.

..... Opponent.

Complainant present in person.

Opponent also in person.

J U D G M E N T

(Per Afonso Araujo)

This Complaint deals with failure on the part of the Public Information Officer for non-compliance of the Order dated 30/12/2008 of this Commission to provide the information sought.

2. The Complainant sought information from the Public Information Officer, the Opponent by request dated 28/01/2008 in respect to items mentioned at 1 to 4 in the said letter. The Opponent did not reply to all the information sought and on 2nd June, 2008 the Complainant approached the First Appellate Authority, Director of Municipal Administration and the First Appellate Authority by order dated 07/07/2008 directed the Opponent to provide the information within 15 days. As the Opponent did not comply with the order of the First Appellate Authority, Second Appeal was preferred on 28/9/2008 and by Order dated 30/12/2008, this Commission directed the Opponent to furnish whatever information is available with him from his records to the Complainant's request and observed that if the records are not available with the Respondent, the same may be obtained from the Vigilance Department and the information should be given within 10 days from the date of the order. As the Opponent did not comply with the order of this Commission, the present Complaint was filed on 19/01/2009.

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3. In the Complaint dated 19/01/2009 the Complainant prayed for a direction to the Public Information Officer to provide the required information sought by him under the Right to Information Act (for short the RTI Act); to take necessary action/impose penalty against the erring officer for depriving him of the information and to direct the Public Information Officer to pay suitable compensation. In the reply-cum-arguments submitted by the Opponent it is stated that the Opponent was under bonafide impression that the file was in the possession of the Vigilance Department and approached the Vigilance Department and the file could not be traced in the office of the Vigilance Department and that the Opponent has not acted in malafide manner nor given any misleading information or refused to furnish any information intentionally nor has withheld any information and that it was beyond the control and capacity of the Opponent that he could not provide information to the Complainant. The Complainant in the counter-reply and written arguments has reiterated whatever he has submitted in his Complaint dated 19/01/2009 and further added that the Opponent at one stage vide letter reference No. F13/CCP/ADM/GEN/08-09/3594 dated 29/10/2008 has agreed to settle the matter by including the Complainant in Phase I or II of the new Municipal Market Complex but has failed to do so, as can be clearly seen from the reply dated 18/05/2009 which is misleading, incorrect and misconstrued and that the Opponent has malafidely denied his request for information at each and every stage which was time bound and that whatever information have been furnished by the Opponent by letter dated 18/05/2009 is time barred and that knowingly given incorrect, misleading information by stating all the files were with the Vigilance Department and that there is nothing on the record to show that the Opponent has made any efforts to obtain relevant information from the Vigilance Department.

4. Shri Rodrigues in his submission has stated that by order dated 30/12/2008, the Opponent was supposed to give information within 10 days. A show cause notice was issued on 29/01/2009 and no reply was given on the hearing of 10/02/2009 and the information given on 19/05/2009 is misleading, incorrect and that the files are with Vigilance Department and that the files are with the Municipality itself and they did not want to provide the information for the best reason known to them. Shri Desai for the Opponent submitted that the documents pertaining to the

Question No. 1 of the Complainant's letter dated 28/01/2008, the original is with the Complainant and the Complainant who could have produced the same as the respective file is not available and that because of non-availability of the records there was a delay and that as on 30/12/2008 the Opponent was holding the additional charge of Commissioner of Corporation of City of Panaji and was full fledged only on 16/02/2009 and there was no intentional or malafide denial of the information.

5. I have gone through records and proceedings of the case and submission of both the parties.

6. The information sought by the Complainant under the Right to Information Act on 28/01/2008 from the Public Information Officer - the Opponent at item No. 1, 2 and 3 pertains to the shop token No. 26 in the Panaji Municipal Market allotted to him by Panaji Municipal Council and in the item No. 4 the Appellant requires a copy of the list of all shops/stalls/gaddas/owners and the allottees in the new Municipal Corporation in Phase I, II and III. As the Opponent did not provide any information, the Complainant on 02/06/2008 approached the First Appellate Authority, Director of Municipal Administration in First Appeal and by order dated 7/7/2008 the First Appellate Authority directed the Opponent to provide the Complainant with information within the period of 15 days. The Opponent failed to dispose the request of the Complainant within the period of 30 days as envisaged under section 7(1) of the RTI Act and which has to be construed as deemed refusal under section 7(2) of the RTI Act. Again the Order of the First Appellate Authority directing the Opponent to provide the information sought within 15 days was also not complied with by the Opponent. Right from the time the Complainant sought information under the RTI Act on 28/01/2008 to the end of time limit of 15 days mentioned in the order dated 7/7/2008 the concerned Public Information Officer during that period not only failed to furnish the information sought but also comply with the order of the First Appellate Authority thereby making him responsible for denying the information sought to the Complainant. Moreover no justification came forth from the then Public Information Officer for not providing the information sought.

7. It is only at the hearings of the Second Appeal the fact brought on record that the relevant file was sent to the Vigilance Department.

Accordingly, this Commission by order dated 30/12/2008 directed the Opponent to provide the information and in case the records were not available the same to be obtained from the Vigilance Department and provide the information to the Complainant. The Public Information Officer, Commissioner, Shri Melvyn Vaz is concerned with these proceedings in respect of the compliance of the Order dated 30/12/2008 and in not providing the information within the period of 10 days from the date of the Order. It appears that the relevant files are not with the Vigilance Department and due to the non-availability of the file, the Complainant was deprived of the information which he needs, for which the Opponent cannot be held responsible. It is difficult to believe that the Opponent when issue a letter No. F13/CCP/ADM/GEN/08-09/3594 dated 29/10/2008 wherein the Opponent assured a shop to the Complainant in the Municipal Market, he would not provided the information which the Complainant's requires which item No. 4 in the letter dated 28/01/2008. It is not known what reasons led the Opponent to submit that the required files are with the Vigilance Department since this file ever reach the Vigilance Department.

8. For all purposes, the files in question are missing for which an inquiry is required to be held on the whereabouts of the file pertaining to the allotment of shop to the Complainant, and item No. 4 of the letter dated 28/01/2008. This inquiry is necessary in order to place the responsibility on those the persons who has caused for the files not being available for the purpose of information under the Act and according to the outcome of this inquiry place the responsibility on those persons for the purpose of penalty under the RTI Act. Right from 28/01/2008 the Complainant has been deprived to the information sought and in such circumstances the compensation has to be given to the Complainant for the harm and injury and inconvenience caused to him for the delay in obtaining the information. Hence, the following order: -

ORDER

1. The Director of Municipal Administration to hold an inquiry in respect of the file pertaining to the shop token No. 26 in the Corporation of City of Panaji and list of the shops, stalls, gaddas, owners and allottees in the new Corporation Market in Phase I, II and III.

...5/-

2. The Director of Municipal Administration to submit his report within period of three months of the inquiry conducted in respect of those files.

3. The compensation of Rs.5000/- to be paid to the Complainant for the harm and injury caused to him due to delay in providing the information. This compensation to be paid from the Corporations funds.

Pronounced in the open court on this 14th day of July, 2009.

Sd/-
(Afonso Araujo)
State Information Commissioner

