

GOA STATE INFORMATION COMMISSION

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

CORAM: Shri Afonso Araujo, State Information Commissioner

Complaint No. 14/SIC/2009

Shri Lirio Lopes
H. No. 732, Sataporio Ward
Village Panchayat Moira,
Bardez – Goa – 403 514

... Complainant

V/s.

Public Information Officer
The Secretary
Village Panchayat of Moira
Moira, Bardez – Goa – 403 514

... Opponent

ORDER

This Complaint deals with the grievance of not providing the information sought under the Right to Information Act, 2005 (for short the Act).

2. By letter dated 26.03.2009 the Complainant required from the Public Information Officer-Opponent copies for the following documents:

1. Complaint dated 4-2-2009 of Leonardo Lopes Lobo of Calizor Moira.
2. Power of Attorney of Mrs. Edith Lobo Castelino of Sataporio Moira in favour of Leonardo Lopes Lobo.

The Opponent in the reply dated 16.04.2009 provided the information at serial No. 1 which is the complaint dated 04.02.2009 of Leonardo Lopes Lobo. However in respect of serial No. 2 which is the Power of Attorney, the reply was that this information was not available. Aggrieved by this denial of information in respect of item No. 2 the Complainant filed the present complaint.

3. The Complainant contended that on the notice issued by the Opponent to the Complainant it is stated that the site inspection arose out of the complaint made by holder of Power of Attorney of Mrs. Edith Lobo Castelino and that the Complainant required this Power of Attorney which the Opponent should have provided under the Act. The Opponent states

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that the Panchayat authorities can act in respect of the illegal constructions on any complaint of any person even on an anonymous letter and that the Opponent does not have any Power of Attorney and is not bound to give the same to the Complainant.

4. I have gone through the records of the case and taken into consideration the submissions of both the parties.

5. The Complainant came to know that the Panchayat authorities had issued a notice to him and acted on the basis of the Power of Attorney executed by Mrs. Edith Lobo Castelino in favour of Leonardo Lopes Lobo, due to which the Complainant required the Power of Attorney from the Public Information Officer under the Act. The Opponent provided the complaint dated 04-02-2009 but denied the information in respect of Power of Attorney stating that the same was not available. Once the Opponent has acted on the Power of Attorney it would have been proper that the Opponent at the time of entertaining the complaint of said Leonardo Lopes Lobo require him to produce the said Power of Attorney and then acted upon this Power of Attorney. No doubt that the Panchayat authorities in respect of illegal constructions can act even on an anonymous complaint, but the Opponent in this case issued a notice to the Complainant and acted upon the Power of Attorney. Whether the Opponent is maintaining such document or not in records of the Panchayat is immaterial. Once the Opponent used the Power of Attorney by issuing and acting upon the notice against the complainant, for whatever reasons, the Opponent has to provide this power of attorney under RTI Act, as it is information within the meaning of section 2(1) of the RTI Act.

6. The objective of the Act is to provide information to the citizens. It is a mandate expressed in section 3 of the Act and only in cases mentioned in sections 8 and 9 of the Act the information can be denied. Further there are provisions in the Act, which deals in cases where the information is not available with the concerned public authority. By virtue of section 5(4) the public authority from whom the information is sought may seek assistance from any other officer in order to obtain the information. So also section 6(3) of the Act deals with cases where the information sought is not with the said public authority but with another

public authority in which cases the public authority to whom the information was sought has to transfer to the public authority having the information. Again, the Public Information Officer by taking recourse to the provision of section 11 can provide the information from the Third Party.

7. Since the Power of Attorney is executed by Mrs. Edith Lobo Castelino and given power to act to Leonardo Lopes Lobo, the Opponent to take recourse to the provisions of section 11 of the RTI Act and provide information sought to the Complainant. Section 11 of the RTI Act says where an information or record which Public Information Officer intends to disclose on request made under the RTI Act which relates to or has been supplied by the third party and has been treated as confidential by the third party, the Public Information Officer within five days from the receipt of the request give a written notice to such third party of the request and of the fact that the Public Information Officer intends to disclose the information or record and invite the third party to make a submission in writing or orally regarding whether the information should be disclosed and such submission of third party shall be kept in view by taking a decision about the disclosure of information. It is within the exclusive domain of the Public Information Officer to take recourse to the provision of section 11 of the RTI Act and disclose the information which is with the third party. It is for the Opponent to decide whether the information to be provided or not based on the submission made by the third party. Besides the third party has a right to appeal against the decision of the Public Information Officer.

8. In such circumstances, the Opponent to give a notice to either Mrs. Edith Lobo Castelino or Leonardo Lopes Lobo or both stating that he intends to disclose the information and which is the power of attorney and follow the procedure prescribed in section 11 of the RTI Act and decide whether the information to be disclosed or not.

9. With these observations, the Complaint is disposed off.

Pronounced in the open court on this 29th day of July, 2009.

Sd/-
(Afonso Araujo)
State Information Commissioner

