

GOA STATE INFORMATION COMMISSION AT PANAJI

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Complaint No. 66/2009

Mr. Prabhakar S. Yende,
Kasarvado – Khorlim,
Mapusa – Goa.

..... Complainant.

V/s.

1. Public Information Officer,
Chief Officer,
Mapusa Municipal Council,
Mapusa – Goa.
2. The Branch Manager,
Bank of Baroda,
Moirá – Goa.

..... Opponents.

Complainant in person.

Opponent No. 1 also in person.

ORDER **(22-12-2009)**

1. The Complainant, Prabhakar S. Yende, has preferred this Complaint, under Section 18(1) of the Right to Information Act, 2005 ('R.T.I.' Act for short) praying that whatever information provided to the Bank of Baroda, Moira Branch, should be revoked immediately and Power of Attorney be treated as null and void; for disciplinary action against the Chief Officer, Shri D. H. Kenaudekar for parting with the Power of Attorney without adhering to section 11 of RTI Act regarding third party information and for compensation.

2. The circumstances leading to the present Complaint could be summarized as under: - That the Complainant had submitted a Power of Attorney to Mapusa Municipal Council officially on demand for allowing the Complainant to take the help of Shri Jawaharlal T. Shetye for

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inspection of files pertaining to K.T.C. stalls under RTI Application dated 20/10/2008. That this Power of Attorney has been produced by the Branch Manager, Bank of Baroda, Moira Branch, during Departmental Inquiry against Shri Jawaharlal T. Shetye on 10/08/2009. The Complainant, therefore, made an application under R.T.I. Act to the Public Information Officer, Mapusa Municipal Council to know how this Power of Attorney has been parted to Bank of Baroda, Moira Branch. That the Opponent No. 1 provided information vide letter No. EST/6132/2009 dated 10/09/2009 stating that this Power of Attorney was supplied to Bank of Baroda, Moira Branch under RTI Act and has provided certified copy of the letter No. Moira/Gen/2008/37/55 dated 22/11/2008 addressed to the Chief Officer, Mapusa Municipal Council from the Manager, Bank of Baroda, Moira Branch. It is the case of the Complainant that under the R.T.I. Act no legal person like a company or society or an association of persons can approach the Public Information Officer for information under section 6(1) of the RTI Act as held by Goa State Information Commission in case No. 25/2006 and 90/2006/TCP. It is also the case of the Complainant that in the instant case the application was made by the Manager, Bank of Baroda, which is not a citizen but it is a legal entity like banking company and, therefore, the Public Information Officer, Mapusa Municipal Council has got no right to entertain its application under RTI Act and that Power of Attorney is the private property of the Complainant which cannot be parted to the third person without the consent of the Complainant. It is further the case of the Complainant that the Opponent No. 2 – Bank of Baroda, Moira Branch, is misusing this Power of Attorney to wrongly implicate its staff Shri Jawaharlal T. Shetye in the Departmental Inquiry constituted

against him by the Disciplinary Authority of Bank of Baroda. Hence, the present Complaint.

3. In pursuance of the Notice, Opponent No. 1 and 2 remained present. However, the reply is filed by the Opponent No. 1. The Opponent No. 2 did not file any reply as such.

4. It is the case of the Opponent No. 1 that they had received an application and that they supplied the Power of Attorney. That the Respondents were not aware of the decisions referred. It is also their case that Power of Attorney was submitted to their Council and that no consent of the Complainant was necessary to furnish copy of the same to the third party.

5. Heard the Complainant and the Opponent No. 1. I have carefully gone through the records of the case and also considered the submissions advanced.

It is seen that Complainant sought some information by letter dated 11/08/2009 from the Opponent No. 1. The information related to Power of Attorney given by the Complainant to Shri J. T. Shetye. The Opponent No. 1 by their reply dated 10/09/2009 gave the required information. Copy of the application was also furnished. It appears that information was furnished in time. Now the grievance of the Complainant is two-fold: - Firstly the information ought not to have been given to the Bank and secondly the Complainant was not heard and without his consent information ought not to have been given.

It is not in dispute that information i.e. copy of Power of Attorney was given to the Bank. Xerox copy of the Application dated 22/11/2009

is on record. I have carefully screened the same. The letter head is of Bank of Baroda. There is Ref. No. and the same is signed by the Manager. I do agree with the contention of the Complainant that Company/Bank, firm etc. cannot seek information under R.T.I. Act.

It is pertinent to note that section 3 of the R.T.I. Act is as under:-

“Subject to the provisions in this Act, all citizens shall have the right to information.”

As per the same only ‘citizens’ have the right to information that means every person who is a citizen can apply for information. It is to be noted here that Citizenship, as defined in Part II of the Constitution of India, includes natural persons and not juristic persons like Corporation. Bank of Baroda is a Nationalised Bank and, therefore, in my view cannot claim information under RTI Act. It is also not the case of Opponent No. 2/Bank before this Commission that the Manager sought information not as a Manager of the Bank but as a citizen. (To-day Opponent No. 2 were absent). Again section 6(1) used the word “Person” who desires to obtain any information under this Act”. Reading section 3 and 6(1) together one will find that since the ‘citizens’ alone are entitled to obtain the information under provisions of section 3 of the Act a ‘person’ desiring to have the information should necessarily be a ‘citizen’ of India. Therefore, a company, Corporation or any body of individuals whether incorporated or not incorporated is not entitled to seek information.

It is pertinent to note the above discussion is only academic now as information is already given. The Public Information Officer should take note of the provisions of section 3 and 6(1) in future.

6. The second contention that the Complainant was not heard. Admittedly the Power of Attorney was given by the Complainant to J. T. Shetye. I have perused the Xerox copy of the Power of Attorney which is on record. I have also perused the letter of the Opponent No. 1 in connection with the information given.

Section 11 of the RTI Act relates to third party information. Third party has been defined under section 2(n) to mean a person other than the citizen making a request for information required to be disclosed as confidential that the authority is required to give a written notice to such third party of the request.

In the case at hand Power of Attorney belonged to the Complainant and, therefore, before deciding the matter the Complainant ought to have been heard. Even, otherwise principle of natural justice demands so.

7. In the case before me both these above mentioned aspects have not been followed. However, this Commission cannot help the Complainant. Firstly, it is seen that information is already given and as per the saying to the Complainant the same is acted upon. Secondly, the information is giving of certified copy of Power of Attorney.

8. Coming to the reliefs sought. The reliefs prayed cannot be granted by this Commission. If information is not given penalty under the Act can be given. But in the instant case information is given to the Complainant in time. Regarding giving information to the Bank it appears that Public Information Officer granted the same may be due to lack of appreciation of the concerned provisions of the Act or lack of knowledge of the said provisions.

Under these peculiar circumstances, I do not think it proper to invoke section 20 of the RTI Act as the same would not be attracted. The prayers sought come within the domain of certain other authority which the Complainant has to exhaust if he thinks so.

9. Before parting with this order, I must say that one must adhere to the provisions of the RTI Act. In case presence of third party is not required order should state so. Public Information Officer is only required to comply with rules of fair hearing.

10. In view of the above, the present Complaint is to be dismissed and is hereby dismissed.

Pronounced on 22nd day of December, 2009.

Sd/-
(M. S. Keny)
State Chief Information Commissioner

