

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 03/2010/CIC

1. Mr. Ulhas Naik,
B-25, La Campala Colony,
Miramar, Panaji - Goa.
2. Mr. Kashinath Shetye,
R/o Bambino Building,
Alto Fondvem, Ribandar,
Tiswadi – Goa.
3. Adv. Ajitsingh Rane,
St. Inez, Panaji - Goa.
4. Adv. Atish Mandrekar,
Taleigao, Goa.

..... Complainants.

V/s.

Public Information Officer,
Goa Housing Board,
Porvorim, Goa.

..... Opponent/Respondent.

Shri Kashinath Shetye, Complainant No. 2 in person.

Adv. Shri H. D. Naik for Opponent.

ORDER **(31-03-2010)**

1. Complainant No. 4, Adv. Atish Mandrekar, has preferred this Complaint praying that the information as requested by the Complainant be furnished to them correctly and fully; that penalty be imposed on P.I.O. for not providing information and inspection of records and that information be given free of costs.

2. The brief facts leading to the present Complaint are as under: -

That the Complainant by an application dated 23/11/2009 addressed to the Public Information Officer of the Administration Department, requested for information under Right to Information Act ('RTI' Act for short). That the Application dated 23/11/2009 was complete in all respects and was submitted in person, however, reply to the above

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says that the application is not proper and it requires to be identified by the Complainant. It is also the case of the Complainant that it is not known why the inspection of records are not permitted; that information not given within 30 days; that information is not deliberately sought to be given to the Appellant amounts to deemed refusal and as such violates the mandate of the RTI Act, 2005. Hence, the Complaint.

3. The Opponent resist the Complaint and their say is on record. It is the case of the Opponent that the Complaint is not maintainable in law in as much as the Complainants have preferred appeal before Appellate Authority as provided under section 19 of the RTI Act which fact has been suppressed by the Complainant from this Commission. On merits it is their case that whatever information available in the office of the Goa Housing Board has already been furnished to the Complainant and therefore nothing survives in the present Complaint. That the present Complaint has been signed only by one person i.e. Complainant No. 4 and verified by him and as such the Complaint ought not to be entertained. That there is no cause of action for the present Complaint. According to the Respondent the application dated 23/11/22009 was not complete in all respects as the same was signed only by two persons and it was not known who those two persons were out of four. It is also the case of the Respondent/Opponent that the Complainant sought certain information by letter dated 23/11/2009 though the same does not pertain to the Complainant nor the Complainants are working with Goa Housing Board and that the same was signed by two applicants. That the Respondent requested the Complainant to sign so that the necessary information could be furnished since the Complainant insisted the application was accepted though the same was not complete in all respects. It is also the case of

the Respondent that the application was duly considered and vide letter dated 21/12/2009 informed the Complainant No. 2 and 4 that part of information is available with Goa Housing Board and the part may not be permissible to be furnished. Since there was no proper application identification was insisted but instead of making proper application the Complainant preferred the First Appeal. During the pendency of the First Appeal the Complainant have suppressed the fact and on 01/01/2010 filed the present Complaint. That First Appellate Authority by Order dated 22/01/2010 directed the Respondent to furnish all the required information to the Complainant and accordingly, information was furnished. It is also the case of the Respondent that all acts were within the time frame and there was no delay on the part of the Respondent. According to the Respondent, Complaint ought to have been rejected.

4. Heard the arguments. Shri Kashinath Shetye argued on behalf of Complainants and Adv. Shri H. D. Naik argued on behalf of the Opponent.

Shri Shetye states that information is given, however, the same is misleading and incorrect. According to him Complaint is filed mainly for this. He also submitted that any one can file Appeal.

Advocate for the Opponent advanced a number of submissions. According to him Complaint is not maintainable as the same was filed during the pendency of First Appeal. He next submitted that out of four only one Complainant signed and as such the same is not maintainable. On merits he submitted that full information has been furnished.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the information is furnished or not?

It is seen that the application seeking information was made on 23/11/2009 and the same was received on 24/11/2009. Public Information Officer by her letter dated 21/12/2009 informed the Complainant/Applicants that the part of the information is available and part of the information may not be permissible to be furnished and that there is no proper application. The Applicants were also told to make proper application. It is seen that applicants did not clarify the matter before the Public Information Officer. Instead preferred First Appeal on 24/12/2009. No Order of First Appellate Authority is on record. The present Complaint is presented on 01/01/2010. It appears that First Appeal was still pending when the Complaint was filed.

It is seen that information has been furnished. There is acknowledgement of having received on 3/2/2010. The letter dated 21/12/2009 was sent within time. But the Applicants/Complainants did not approach the Public Information Officer with a view to clarify the matter.

It is submitted by Shri Shetye that information has been received and that he has no dispute on that. According to him Complaint was filed as the information given was false, incorrect and misleading. The main thrust of his arguments is on this aspect.

6. Advocate for Opponent contends that Application was signed only by two applicants and it could not be made out as to who signed so clarification was sought. He argued on maintainability of the Complaint. He also referred to First Appeal and filing of Complaint during the pendency of the Appeal.

I need not refer to these aspects as the same would be purely

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academic as information has been already furnished. However, it is to be noted here that an appeal proceeding is a continuation of the original proceeding. The Appellate Authority can vary, modify or substitute its own decision in place of the decision of the Order of Public Information Officer. The Appellate Authority can quash or set aside the decision of Public Information Officer and can pass its own decision, which may be altogether different from that of the original decision. I do agree with the Advocate for the Opponent that First Appeal ought to have been disposed. Normally any information seeker should exhaust the remedy of First Appeal. It has been held that normally this remedy of First Appeal must be exhausted first.

In any case information is furnished and as such we need not touch this aspect.

7. Now it is to be seen whether information given is incomplete, incorrect, misleading etc. as contended by the Complainant. According to the Complainant, it is so. According to Advocate for Opponent it is not so. Complainant Shri Shetye pointed some documents.

It is to be noted here that purpose of the RTI Act is per se to furnish information. Of course Complainant/Applicant has a right to establish that the information furnished to him is false, incorrect, misleading etc, but the Complainant has to prove it by means of some sort of documentary evidence to counter Opponent's claim. The information seeker must feel that he got the true and correct information otherwise purpose of RTI Act would be defeated. It is pertinent to note that mandate of RTI Act is to provide information – information correct to the core and it is for the Complainant to establish that what he has received is incorrect and incomplete.

8. In the light of the above, it is seen that information is furnished and in view of submissions made no intervention is required, however, the Complainant should be given an opportunity to prove that the information is incomplete, incorrect, misleading etc. Hence, I pass the following Order:-

No further intervention in the Complaint is required.
The Complainant is given an opportunity to prove that information furnished is false, incorrect, misleading etc.

Complaint is accordingly disposed off.

Further inquiry posted on 28/4/2010 at 10.30 a.m.

Pronounced in the Commission on this 31st day of March, 2010.

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

