

GOA STATE INFORMATION COMMISSION

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

Appeal No. 51/2006/Commu.

Lt. Col. Sylvester M D'Souza, Retd.,
217 Bella Vista, Sangolda,
Bardez – Goa 403 511.

..... Appellant.

V/s.

1. Public Information Officer
Office of Administrator of Comunidades,
North Goa, Mapusa, Bardez – Goa.

2. First Appellate Authority
The Additional Collector, North Goa,
Collectorate Building, Panaji - Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per G. G. Kambli)

Dated: 01/02/2007.

Appellant in person.

Respondent No. 1 is represented by Adv. Mahesh Rane and authorized representative of Respondent No. 2 present.

J U D G M E N T

This is the second appeal filed by the Appellant against the Respondents praying inter alia that penalty be imposed on the Respondent No. 1 for providing incomplete, incorrect and misleading information in a malafide manner, and for delaying to furnish the correct information. Disciplinary action against the Respondent No. 1 and claiming the damages of Rs.50,000/- for causing harassment, delay, anxiety, tension and worries resulting his hospitalization in the Intensive Care Unit of Goa Medical College Hospital thrice in March, April and May, 2006, under Section 19 read with Section 20 of the Right to Information Act, 2005 (hereinafter referred to as the Act).

2. The notices were issued to both the parties. Both the Respondents have filed their replies. The Appellant has filed his rejoinder and also subsequently filed an amendment to rejoinder. Shri Mahesh Rane, the learned Advocate appeared for the Respondent No. 1 and argued the matter. The arguments of the Appellant were also heard.

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3. The facts of the case in brief, are that the Appellant's son namely Rahul D'Souza applied for grant of plot belonging to the Comunidade of Sangolda vide application dated 8th May, 2000. On 29th January, 2006, the Appellant noticed that the Comunidade of Sangolda has notified for allotment of 16 plots to various persons who had applied in 2004 (barring 2) and therefore, his son vide his letter dated 29th January, 2006 and subsequent letters dated 7th, 13th and 27th February, 2006 to the Registrar as well as to the Administrator of Comunidade sought the reasons for overlooking his application and the current status. However, inspite of these letters and the representations to the higher authorities such as the Collector (North Goa), Revenue Secretary, Government of Goa, Appellant's son did not receive any response from any authorities. The Appellant, therefore, by his application dated 14th July, 2006 sought the following information from the Respondent No. 1:-

- a) How many plots were available for allotment in Sangolda Comunidade as on 1st January 1988 and how many have been allotted the names and addresses of the allottees. Also the current status of my son's application as of the date of this letter.
- b) Photo copy of the Register of Applications for grant of plots received since 1st Jan 1988.
- c) Details of the meeting held in a private residence in Sangolda in and around July/August 2005 in which it is understood that a secret and adhoc agreement was arrived at whereby eight each Catholic and Hindu joneirs/components would be allotted plots in Sangolda Comunidade in 2005.
- d) Circumstances under which 16 applications all dated 2004 (except two) were considered in Gazette of Goa Notification Series III No. 22 dated 1st Sep 2005 for allotment of plots thus bypassing my son's application dated 8th May 2000 and the reasons for the dates of the notices under paras 16 to 29 all bearing the inscription Sangolda 2005 without giving any date.
- e) Photo copy of the Minutes of the Extraordinary Meeting of the Sangolda Comunidade held in Sept 2005 i.e. three weeks after the Notification of 1st Sept 2005 in the Gazette mentioned above, as also that of Sep 1989.

- f) Photo copy of the Gazette Notification asking for objections to the above Notification of 1st Sep 2005, as well as notices announced in the temples, chapels and the Church in Sangolda.
- g) The plot and survey number of the plot being allotted to my son as applied for by him i.e. on 8th May 2000.

4. The Respondent No. 1 by his letter dated 20th July, 2006 informed the Appellant to contact the clerk of the Comunidade of Sangolda for information on points a, c, d, e, f and g and the information on point b will be given by his office on payment of prescribed fees. The Appellant reacted with the said reply of the Respondent No. 1 vide letter dated 26th July, 2006 stating that the Appellant is not required to go to in subordinate office and it is the duty of the Respondent No. 1 being Public Information Officer to collect and provide the information to the Appellant. As regards, payment of the fees, the Appellant also informed that he had already sent the cross postal order for Rs.10/- and requested the Respondent No. 1 to inform him the further cost payable towards the supply of the information. However, the Appellant did not receive any further reply from the Respondent No. 1 and therefore, the Appellant preferred the first appeal before the Additional Collector (North)/first Appellate Authority. During the course of the pendency of the appeal, the Respondent No. 1 vide letter dated 28th September, 2006 furnished the following information to the Appellant: -

- (a) Comunidade has informed that no plots were made for allotment in Sangolda Comunidade as on 1st January 1988. As regards status of application of your son, they have informed that mere submitting an application on plain paper to Comunidade does not qualify an application for allotment of Comunidade plot, as it was not made in accordance with provision of Art. 329 of the Code of Comunidades, and Rules made there under.
- (b) Information has been furnished by the office of Administrator.
- (c) The Sangolda Comunidade has informed that they did not hold a meeting in private residence at Sangolda in and around July/August 2005. Therefore, the Comunidade did not make any allotment and they have not made secret or ad-hoc agreement in the year 2005.
- (d) Comunidade has informed that 14 applications received in accordance

with the provision of Code of Comunidades along with the relevant documents were processed and sent to Comunidade of Sangolda for placing before the General Body for deciding the applications. Accordingly the Comunidade issued meeting notices and published in Official Gazette series III No. 22 dated 01/09/2005. As your son's application was not received in accordance with Art. 329, they have not recommended you son's application to Administrator for further process. They have informed that inadvertently the dates on notices were remained to be mentioned.

(e) Comunidade has furnished photo copy of the minutes of Extraordinary Meeting of the General Body held on 18/09/2005 w.r.t. the notice published in the Official Gazette series III No. 22 dated 01/09/2005 is enclosed. As regards meeting held in September 1989, it is stated that no meeting was held in September 1989.

(f) Comunidade has furnished copy of the Gazette series III No. 22 dated 01/09/2005 and the notice copy read in the Church, Temple of Sangolda Village are enclosed.

(g) Comunidade has informed that "since your son has not applied for plot in accordance with Article 329 of the Code, his application dated 18/05/2000 was not recommended for process by the Comunidade to Administrator. Hence, information requested cannot be furnished".

5. Immediately, on 30th September, 2006, the Appellant sought further clarification/information from the Respondent No. 1 which has been supplied by the Respondent No. 1 vide letter dated 3rd October, 2006.

6. The Respondent No. 2 by his order dated 6/10/2006 held that the information required by the Appellant was already furnished and the truthfulness of the information needs to be challenged under the code of Comunidade. Hence, the present second appeal.

7. The case of Appellant is that there has been an inordinate deliberate delay on the part of the Respondent No. 1 in providing the information and the information so provided is incomplete, incorrect and false and therefore, the Respondent No. 1 is liable for the penalty. The Appellant also submitted that since the Appellant has been unnecessarily harassed, he is entitled to the compensation.

8. Shri M. Rane, the learned Advocate for the Respondent No. 1 fairly conceded that there has been a delay in providing the information to the Appellant but the delay is not deliberate or malafide. He submitted that the information sought by the Appellant was not available in the office of the Respondent No. 1 and the Respondent No. 1 had to collect the information from the clerk of the Comunidades of Sangolda who is holding the charges of three more Comunidades and attends only once in a week to the office of the Comunidade of Sangolda. Since, the information was to be collected from the Comunidade of Sangolda and as there has been a delay in getting information from the concerned Comunidade, the delay has been caused due to genuine reasons. He further submitted that the application of the Appellant's son could not be processed because the Appellant's son has not provided the required details as provided by Article 329 of the Code of Comunidades. He also submitted that the Appellant is well aware of the procedure to be followed for grant of Comunidade plot as the Appellant himself has obtained the Comunidade plot and constructed a house therein.

9. The Respondent No. 1 in his reply has submitted that the Respondent No. 1 is holding additional charge of the post of the Administrator of the Comunidade of North Zone w.e.f. 26/12/2005 in addition to the post of the Project Officer in District Rural Development Agency and he attends the office of the Administrator twice a week i.e. on Tuesday and Thursday. He further stated that he is having under his control 75 Comunidades including the Comunidade of Sangolda. The Registrar of Comunidade of Sangolda who is also looking after 4 Comunidades including that of Sangolda was asked to submit the information sought by the Appellant. It has been further stated that as per the practice followed, whenever any application/complaint is received by the Registrar, the said application/complaint has to be placed before the Managing Committee for its decision. The Respondent stated that he received the information from the Attorney of Comunidade of Sangolda on 26/9/2006 and the same was provided to the Appellant on 28/9/2006. The Appellant has also filed rejoinder to the reply filed by the Respondent No. 1. In the rejoinder, the Appellant has prayed that the Respondent be directed to cancel the Gazette notification dated 1st September, 2005 and direct the Comunidade of Sangolda to process all the applications including the application dated 8/5/2000 of the Appellant's son. The Appellant has also prayed for a direction for the remedial action in the allotment of the plot to his son in terms of application dated 8/5/2000 with retrospective effect.

10. The Respondent No. 2 in his reply has stated that he disposed off the appeal as the information sought by the Appellant was already provided by the Respondent No. 1 and that in respect of the other prayers regarding the allotment of plot to his son the Respondent No. 2 stated that the same does not fall under the Act but the Appellant was advised to approach the Respondent No. 1 for appropriate decision. The Respondent No. 2 has also stated that advice was also sought from the Law Department as to whether the institution of the Comunidades falls within the purview of the Act and the advice was received in the beginning of September and accordingly the same was circulated stating that the Act applies to the Comunidades.

11. We have gone through the memo of appeal and other documents produced by the Appellant and as also the replies filed by both the Respondents and the rejoinder filed by the Appellant. We have also considered the arguments of the Appellant as well as the learned Advocate of the Respondent No.1.

12. As brought out by the Appellant, the Appellant has been pursuing the application of his son for allotment of plot of the Comunidade of Sangolda with the Respondent No. 1 as well as with the Comunidade of Sangolda right from 29th January, 2006 followed by reminders and complaints to the Respondent No. 1 and higher authorities like Collector (North), Revenue Secretary. This has not been denied by Respondent No. 1. It is only when the Appellant was not getting the reply from the Respondent No. 1 or from the Comunidade of Sangolda, the Appellant has made an application dated 14/7/2006 under the Act. The said application was received by the Respondent No. 1 on 17/7/2006 as per the reply filed by the Respondent No. 1. Admittedly, the information was supplied to the Appellant on 29/9/2006 when the first appeal was pending disposal before the Respondent No. 2. The Respondent No. 1 vide letter dated 20/7/2006 requested the Appellant to contact the Registrar of the Comunidade of Sangolda for the information except the information on point (b) of the application of the Appellant. In fact, it was the duty of the Respondent No. 1 to collect the information wherever it is available and provide the information to the citizen. The Respondent No. 1 being the Public Information Officer ought not to have directed the Appellant to approach the Registrar of Comunidade of Sangolda and therefore, the action on the part of the Respondent No. 1 asking the Appellant to contact Registrar of Comunidade of Sangolda was totally wrong and uncalled for. In terms of Section 5(4) of the Act, the Public

Information Officer has to seek assistance to obtain information from the officer where the information is available and in case that officer fails to provide the information that officer shall be treated as Public Information Officer for the purposes of the Act as per sub-section (5) of Section 5 of the Act. In the present case, the Respondent No. 1 has tried to explain the delay stating that he is holding the additional charge of the Administrator of the Comunidade of North Goa and attends the office only twice a week. The Respondent No. 1 was well aware of the application of the Appellant made on 14/7/2006 as the Respondent No. 1 has sent the reply on 20/7/2006. The Respondent No. 1 has also tried to justify the delay on the part of the Registrar of Comunidade of Sangolda stating that the said Registrar is looking after the work of 4 Comunidades. In this contest, it is to be noted that it is not the first time that the Appellant has approached the Respondent No. 1 and the Registrar of the Comunidade of Sangolda seeking information or status of the application of his son. Therefore, the Respondent No. 1 and the Registrar of the Comunidade of Sangolda were seized of the matter. It is only when the information was not forthcoming from the Respondent No. 1 or from the Registrar of Comunidade of Sangolda, the Appellant made an application under the Act. The Respondent No. 1 has not given the number of applications received by him under the Act and the number of applications disposed off in order to justify the delay. The Respondent No. 1 has also not mentioned in his reply the date on which the information was called from the Registrar of the Comunidade of Sangolda on receipt of the application of the Appellant. It is necessary to have this information as responsibility and accountability has to be fixed for causing delay. The Affidavit of the Registrar of the Comunidade of Sangolda giving the justification for a delay has also not been produced in support of the reply filed by the Respondent No. 1. The Respondent No. 1 in his reply has also stated that the information has been provided by the Attorney of the Comunidade of Sangolda and therefore, if the Registrar of Comunidade of Sangolda is busy, the information could have been provided by the Attorney of Comunidade of Sangolda much earlier.

13. The Respondent No. 2 in his reply stated that the advice was sought from the Law Department as regards to the applicability of the Act to the institution of the Comunidades and the said advise was received in the beginning of September, 2006. The Respondent No. 2 has not clarified as to when the matter was referred to the Law Department for advice. The Respondent No. 1 in his reply has stated that as per the practice followed by

the Managing Committee of the Comunidade whenever any application/ complaint is received, the same is required to be placed before the Managing Committee for their decision. In this contest, it is to be pointed out that the Respondent has not cited any provision of the Code of Comunidade under which such type of matters are required to be placed before the Managing Committee for decision. In the instance case, the information is called by the Administrator of Comunidade who is the controlling and supervisory authority nor the Managing Committee and therefore we fail to understand as to why the decision of the Managing Committee is required to submit information to the higher authority. That apart, assuming that there are provision in the Code of Comunidade for placing such matter for decision before the Managing Committee, the provisions of the Act have got overriding effect over the Code of Comunidade in terms of Section 22 of the Act. Therefore, the contention of the Respondent No. 1 that the matter was required to be placed before the Managing Committee for its decision cannot be accepted. In fact the Respondent No. 1 ought to have exerted his authority and obtained the information from the Registrar of the Comunidade of Sangolda.

14. The Appellant has prayed in the rejoinder that the notification published in the Official Gazette Series III No. 22 of 1st September, 2005 be cancelled and for directions to the Comunidade of Sangolda to consider all the applications including that to his son Rahul M. D'Souza. The role of the Commission under the Act is limited to ensure that the citizen seeking information are provided correct information within the stipulated period. The Commission cannot sit or examine the validity of the decision or orders of the authorities which is beyond the scope of the Act. Therefore, the prayers of the Appellant to cancel the notification published in the Official Gazette on 1st September, 2005 and or giving to the Comunidade of Sangolda or Respondent No. 1 to consider the application of his son alongwith other application cannot be entertained and therefore, the same is deserves to be rejected.

15. On careful perusal of the application dated 14/7/2006 seeking the information and the replies of the Respondent No. 1, it is seen that the information sought by the Appellant has been provided. Even the information which has been subsequently sought in the form of clarification was also provided to the Appellant. Now the case of the Appellant is that the information provided to the Appellant is incorrect. He drew the attention of the Commission to the reply dated 28th September, 2006 of the Respondent

No. 1 and stated that the Respondent No. 1 has informed that 14 applications were received in accordance with the Code of Communitade whereas as per the notification published in the Official Gazette 16 applications were processed by the Communitade of Sangolda and therefore, the information provided by the Respondent No. 1 on this point is false. The Appellant has produced the Official Gazette wherefrom it is seen that the Communitade of Sangolda has notified 16 applications. It can be seen from the notification that the Communitade of Sangolda notified the application from Sr. No. 14 to 29 containing particulars of the applicants in the Official Gazette and therefore, 16 applications were notified in the Official Gazette and not 14 as informed by the Respondent No. 1 to the Appellant. However, the Respondent has provided this information to the Appellant based on the information received from the Attorney of the Communitade of Sangolda. Further, it is seen that the Respondent No. 1 in his subsequent clarification dated 3/10/2006 clarified that the 14 applications may be read as 16.

16. Keeping in view the background of the case that the Appellant has been pursuing the matter with the Respondent No. 1 and the concerned authorities from 29th January, 2006 and the manner in which the Respondent No.1 and the authorities of the Communitade have dealt with this matter, one can come to the conclusion that delay has been deliberate and intentional. There has been considerable inordinate delay. Therefore, in order to find out and fix the accountability and responsibility, it is necessary to have the more details such as date of seeking the information by the Respondent No. 1 from the Registrar of Communitade of Sangolda, the reminders if any and the date of the seeking of the advise from the Law Department. It is necessary to find out as to who has provided this incorrect information initially to the Respondent No. 1 as the said officer is to be treated as Public Information Officer for any contravention of the provisions of the Act in terms of section 5 (4) & (5) of the Act.

17. In these circumstances, the following order is passed: -

ORDER

The Respondent No. 1 is directed to submit the attested copies of the letter including the reminders if any issued to the Registrar of Communitade of Sangolda directing him to submit the information pursuant to the application of the Appellant.

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2. The attested copies of the replies received from the Comunidade of Sangolda in response to the letters of the Respondent No. 1.
3. Whether the Attorney of the Comunidade is competent to provide the information to the Respondent No. 1 when the information was sought from the Registrar.
4. The Respondent No. 2 is directed to inform the date on which the matter was referred to the Law Department for advice.
5. The prayer of the Appellant to cancel the notification published in the Official Gazette, Series III, 22 of 1st September, 2005 and to direct the Respondent No. 1 to consider the application of the Appellant's son alongwith other applications is hereby rejected.

Next hearing is fixed on 7th February, 2007 at 11.00 a.m. The Respondent No. 1 shall remain present alongwith aforesaid information.

Announced in the open Court on this 1st day of February, 2007 at 11.00 a.m.

(G. G. Kambli)
State Information Commissioner, GOA.

(A. Venkataratnam)
State Chief Information Commissioner, GOA.