

GOA INFORMATION COMMISSION

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

Complaint No. 03/2008

Shri. Premanand G. Phadte,
46/E, Arlem Rai,
Salcete, Goa – 403720.

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Complainant.

V/s.

The first Appellate Authority,
The Director,
Directorate of Education,
Panaji – Goa.

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Opponent.

CORAM:

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

(Per A. Venkataratnam)

Dated: 09/07/2008.

Complainant absent.

Shri. Avinash V. Nasnodkar, authorized officer on behalf of the Opponent.

ORDER

The Complainant herein requested for certain information on 23/03/2007 to the Public Information Officer of the Directorate of Education. The information requested is on 5 points. Consequent on the various replies given to him by the officials of the Education Department, and the Opponent as first Appellate Authority, a second appeal was earlier submitted to this Commission bearing No. 72/2007-08/Edu. which came to be disposed off by our order dated 29/11/2007. In that order, certain directions were given to the Opponent herein, while setting aside her order dated 27/07/2007 passed as first Appellate Authority. The first direction was given to her under section 4(1)(d) of the Right to Information Act, 2005 (RTI Act for short). Other relief was also given that certain questions had to be transferred to the Head Master/Head Mistress of M & N English High School, Margao for dealing with a part of the request for information of the Complainant. In compliance with the order dated 29/11/2007 of this Commission, the Opponent has replied to the Complainant on 25/02/2008 the action taken by her which was found to be not satisfactory in the opinion of the Complainant leading to the filing of present complaint No. 03/2008. He was also not satisfied with reply furnished to him by the M & N High School separately of which he has gone in first appeal to the same Opponent and there afterwards filed the second appeal before this Commission. This is dealt as a separate case as Appeal 16/2008 which will be dealt with separately.

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2. We are now concerned with this complaint only in respect of the direction given to the Opponent as a public authority to take action "to provide reasons for its administrative or quasi-judicial decisions to the affected person", namely the present Complainant. A time limit of 3 months was also allowed therein. The scheme of the RTI Act lays down that all citizens have a right to request for and obtain information from the public authorities and the public authorities have an obligation to reply to the citizens on such requests under the RTI Act. The RTI Act also does not require citizens to prove their locus standi or give the reasons for seeking the information. In case of non-supply of information or giving of wrong information, relief is provided to the citizens by way of granting him the appellate right before two fora. Besides, the RTI Act has got a unique provision under section 4(1)(d) to grant relief to only an "affected person" and not to all citizens. This right is to ask for and get the reasons for the administrative or quasi-judicial decisions of a public authority. This right is not available to all the citizens but only to the aggrieved persons or persons aggrieved directly by the certain action or inaction by a public authority. This right is over and above the general rights, right to know information by all the citizens. The citizens are not entitled to know the reasons for the actions of the public authorities under this law. The position of law is settled by the Hon'ble High Court of Bombay at Panaji Bench by their order dated 3rd April, 2008 in Writ Petition No. 419/2007, Celsa Pinto V/s. Milan G. Natekar and another. It is laid down that neither the public authorities are required to justify their actions why they have taken a certain decision and how it is correct according to the law nor this Commission is empowered to go into correctness or otherwise of the action taken by the public authorities. However, in the special right granted to the "affected persons" under section 4(1)(d) of the RTI Act, the aggrieved person is entitled to know reasons for the actions taken by the public authority. The scope of this provision was not interpreted by the Hon'ble High Court in the Writ Petition cited supra. In the case before us now, the Complainant has stated that his son was not admitted to the M & N English High School at Margao because of a certain procedure of an admission test and other criteria adopted by the school and hence, he is an "aggrieved person". Accordingly, he has asked for the reasons to the Opponent as to whether the action of the M & N English High School in holding a test before admitting the child to their school is in accordance with Education Law implemented by the Opponent and certain other related questions. As the Opponent did not give any reply initially either way, the Commission was compelled to issue directives under the above section 4(1)(d) to take action within a period of 3 months. Normally, we are not supposed to further go into the validity and correctness of action taken by public authority under this section. However, we have to see whether the reasons were given by public authority to the affected person in pursuance to the directions given by the Commission under this section. With this background, we will now examine the request of the Complainant and the response of the Opponent.

3. By question No. 1 of the original request dated 23/03/2007, the Complainant wanted to know why no inquiry was conducted on his complaint dated 11/07/2005 with regard to denial of admission in Std. V of his son by the M & N English High School. The Opponent by her letter dated 25/02/2008 replied to the Complainant the compliance of the Commission's order dated 29/11/2007. The request no. 2 (a) was about the oral test conducted by M & N English High School to admit students during May, 2005 "by violating the education rules was credible". The Opponent referred to an earlier letter dated 8/2/2008 sent by the school to the Complainant and stated that no further information is required to be furnished. Obviously, this is not a correct reply. The Opponent as the Head of the Department has to take a view whether the oral test conducted by the school for admission to Std. V is a violation of education rules or not. If it is a violation what action is proposed by the Department has to be informed to the Complainant. Obviously, this view has to be taken only by the Education Department and not by the school management. The school management has already given their version that it is within their competence to test the "students' capabilities" before admission to their school. This test is administered only in respect of children coming from other schools to their school but not to those who are promoted from lower classes of their own school to Std. V. To say that no further information is required to be furnished to the Complainant is to abandon her responsibility to give the reasons under section 4(1)(d) and the order of this Commission to comply with the above provision. However, we find that the Opponent did take action against the school management by reprimanding them and hence though the reply of the Opponent is wrong for this question, we consider that our order on this point is complied with.

4. The question at point 3(b) of the original request is regarding the penal action taken on the official concerned for delaying the enquiry into the complaint dated 11/07/2005 for over a year. The Opponent informed that she had found that it was not necessary to take any further action against the officers and the delay was administrative delay. This is in compliance with our direction to give the reasons and it complies with the requirements of section 4(1)(d) of RTI Act. It is not for us to go into the merits of the decision of the Opponent not to take any action against her officials. The Commission has to only see whether a reply was provided by the Opponent which she has done. The questions 4 and 5 relate to the same subject of violation of rules by the M & N English High School and the penal action if any taken by the Opponent against the school management. The Opponent has replied to the Complainant that the school management was served with a show cause notice and after holding an enquiry, the school management was reprimanded not to take donations while admitting students in Std. V and that further action is not found to be necessary in this case. Only after issuance of the order by this Commission, the action taken against the school was informed by the Opponent to the Complainant. We reiterate once again that we cannot go into and adjudicate on correctness or otherwise of the action taken by the Director of

Education against the school management. Suffice it to say that an enquiry was conducted after issuing a show cause notice and a reprimand letter was given to the school management, a copy of which was said to have been sent to the Complainant.

5. With the above discussion, we find that the provision of section 4(1)(d) and the direction given to the Opponent by our earlier order dated 29/11/2007 have been complied with by the Opponent and hence, dismiss the complaint.

Pronounced in the open court, on this 9th day of July, 2008.

Sd/-
(A. Venkataratnam)
State Chief Information Commissioner

Sd/-
(G. G. Kambli)
State Information Commissioner