

GOA INFORMATION COMMISSION

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

Complaint No:12/2006-07

Shri Ranjit Satardekar,  
1<sup>st</sup> Floor, Azavedo Building,  
Patto, Panaji – Goa.

... Complainant.

V/s

The Public Information Officer,  
The Member Secretary,  
North Goa Planning and Development Authority,  
1<sup>st</sup> Floor, Archdiocese Building,  
Mala, Panaji – Goa.

... Opponent No. 1.

The Asst. Public Information Officer,  
The Head Clerk,  
North Goa Planning and Development Authority,  
1<sup>st</sup> Floor, Archdiocese Building,  
Mala, Panaji – Goa.

... Opponent No. 2.

CORAM:

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

(Per A. Venkataratnam)

Dated: 10/01/2008.

Complainant in person.

Adv. Hanumant Naik for the Opponents.

**JUDGMENT**

This disposes off the complaint dated 24/05/2007 filed against the Opponent under section 18 of the Right to Information Act 2005 (for short the RTI Act).

2. The case of the Complainant is that the Complainant vide his application dated 30/03/2007 requested the Opponent to give him the inspection of the files in respect of the NOCs/clearances issued by the office of the Opponent for the development of the property bearing Sy.No.250/4 the Taleigao Village, Tiswadi and putting construction/

...2/-

building therein situated at Dona Paula. The Complainant also expressed his desire to have copies of the application for NOCs, Plans, Orders, notings and other documents therefrom. Hence, the Complainant requested to fix the date and time for the inspection so that list of the documents can be prepared and furnished to the Opponent for supply of copies thereof.

3. The Opponent No. 1 vide letter dated 25/04/2007 informed the Complainant that his request was considered to inspect the file No. NGPDA/185 bearing Sy. No. 250/4 of Taleigao Village and that the Complainant could inspect the said file on 30/04/2007 at 10.30 A.M. Accordingly, the Complainant remained present in the office of the Opponent on 30/04/2007 at 11.00 a.m. where the opponent No. 2 gave to the Complaint file bearing No. NGPDA/185 for inspection. However, on going through the said file, the Complainant noticed that the said file contained some documents pertaining to the NOCs for occupancy certificate issued to one Shri Andrew Fernandes and that there were no documents in the said file pertaining to the NOCs/Clearances issued for the developments of the property bearing Sy. No. 250/4 of Village Taleigao at Dona Paula and for putting construction therein. The Complainant, therefore, drew the attention of the Opponent No. 2 to that effect. However, the Opponent No. 2 wanted the endorsement on the application of the Complaint that the Complainant has carried out the inspection. The Complainant expressed his inability to make any such endorsement, as the Complainant was not provided for inspection the exact file. The Complainant, therefore, made an endorsement to the effect that the concerned file was not made available to the Complainant for inspection.

4. The Complainant, thereafter, addressed a letter dated 2/05/2007 to the Opponent No. 1 bringing out to his notice that the concerned file was not made available for inspection and made several visits to the Opponent No. 2 for getting the inspection of the concerned file but the same was not made available till his last visit that is 22/05/2007 and therefore, the Complainant has filed the present Complaint.

5. The notice dated 28/05/2007 were issued by the Commission to both

the parties fixing the matter for hearing on 12/06/2007. On 12/06/2007, the Complainant filed an application alleging that after issue of the notices of the Commission, the Opponents hastened to issue the letter dated 31/05/2007 to the Complainant to carry out the inspection. The Complainant alleges that this letter was issued by the Opponents with ulterior motive and malafide intention to defeat the prayer of the Complainant seeking the imposition of penalty.

6. The Opponents had taken the preliminary objection stating that the prayers of the Complainant do not fall within the purview of the RTI Act. The Opponent have not proved as to how this Commission has no jurisdiction to entertain the present Complaint and grant the relief prayed therein apart from making the above bald statement. The Commission has been empowered to entertain the Complaint under Section 8 of the RTI Act on the grounds mentioned therein. Similarly, the Commission has also been empowered to impose penalty on the Public Information Officer for the reasons mentioned in section 20(1) of the RTI Act so also to recommend disciplinary action against the PIO under section 20(2) of the RTI Act. It is also the duty of the Commission to monitor and to ensure the Compliance of the provisions of the RTI Act under section 25 of the RTI Act. Therefore, the prayers of the Complainant fall within the ambit of the RTI Act and as such the preliminary objection raised by the Opponents is over ruled.

7. The Opponent No. 1 filed an affidavit in reply. In his affidavit in reply, the Opponent No. 1 stated that the prayers of the Complainant which the Complainant is seeking are of general nature and are not coming within the purview of the Commission as the Commission has to act within the provisions of the RTI Act. The Opponent No. 1 has further stated that the Complainant did not specify the name of the owner of the land in whose favour development permission, etc. was issued nor had the Complainant given any reference number of the file and therefore, in the absence of such specific details, it was difficult for the Opponent to furnish the desired information to the Complainant. The Opponent No. 1, further stated that the file bearing No. NGPDA/185 pertaining to the Sy. No. 250/4 of Taleigao

Village contained the correspondence including the notings related to the issue of completion certificate. The Opponent No. 1 also stated that the letter dated 25/04/2007 was issued within the time. The Opponent No. 1 also admitted of having received the letter dated 2/5/2007 of the Complainant. The Opponent No. 1 submitted that the file which was made available to the Complainant was also a part of information sought by the Complainant and it very much pertained to the development carried out in Sy. No. 250/4 of Taleigao village.

8. Further, the Opponent No. 1 stated that extensive efforts were made to locate the file from the records and on finding the same which contained other records pertaining to the development, and after considering the request, the Complainant was informed vide letter dated 31/05/2007 to visit the Office for the purpose of inspection on 7/06/2007. However, the Complainant failed to remain present. Hence, according to the Opponent the information sought by the Complainant was provided to the Complainant. In para 18 of the affidavit in reply the Opponent has stated that the Opponent vide his letter dated 31/05/2007 had informed the Complainant that certified copies are issued only to the owner of the particular properties etc. and that the authority provide information only under the RTI Act. According to the Opponent, there was no delay in providing the information to the Complainant.

9. The Opponent has also denied of having issued the letter dated 31/05/2007 on receipt of the notice of the Commission. According to the Opponent, the Opponents received the notices of the Commission only on 01/06/2007 and not on 31/05/2007. In support of his submission, the Opponent has produced the xerox copies of the notices, which carries the date of inward as 01/06/2007. Subsequently, the Complainant filed an application dated 23/07/2007 stating that the Complainant inspected the original notices of which copies were produced by Opponent before this Commission on 06/07/2007 and the envelope containing the said notice addressed to Opponent No.1 was not made available for inspection, but, the inspection of only one envelope wherein the notices sent to the Opponent No. 2 was given for inspection but other envelope in which the notice sent to

the Opponent No. 1 was not given for inspection. Therefore, he prayed for time for filing his affidavit in rejoinder. The Complainant, thereafter, moved another application dated 10/08/2007 stating that envelopes in which the notice sent to the opponent No. 2 shows the postal stamp of having delivered the letter to the Opponent No. 2 on 31/05/2007 and therefore, it follows that the opponent No. 1 must have also received the notice on 31/05/2007 and therefore, the Complainant prayed that the Opponents be directed to produce both the envelopes before this Commission as it is necessary to establish that the said letter dated 31/05/2007 was issued on receipt of the notices of this Commission on 31/05/2007. The Complainant, thereafter, filed his affidavit in rejoinder. In his Affidavit in rejoinder, the Complainant has reiterated all the facts. The Complainant has alleged that the Complainant had filed some complaints before the Opponent No. 1, his predecessors, officials about the number of illegalities committed and therefore, in order to hide/cover these illegalities, the Opponents made an attempt to deprive him of the access to the files pertaining to the development and constructions in the property bearing Sy. No. 250/4.

10. In his affidavit-in-rejoinder, the Complainant has narrated therein the background of the matter levying various allegations stating that the Opponent No. 1, his predecessor, officials had committed number of illegalities and in order to hide/cover up the same, the Opponent No. 1 made attempts to deprive the Complainant of the access to the files pertaining to the developments and also for putting up construction in the property bearing survey No. 250/4 of Village Taleigao situated at Dona Paula.

11. The Complainant has cited several examples as follows:-

- (i) That Opponent No. 1 has issued NOC dated 14/6/2006 to Matias construction in disobedience of the orders dated 12/5/2006 and 31/5/2006 of the Hon'ble Supreme Court in spite of having brought to the notice of the Opponent No. 1 the said orders;
- (ii) The Opponent No. 1 also issued the NOC dated 14/6/2006 based on unregistered chart of partition deed dated 27/3/2007;
- (iii) That the Opponent No. 1 granted NOC dated 13/12/2006 to the

builder Jose Matias to register the sale deed dated 24/10/2006 to illegally transfer an area of 640 sq. mts. from the undivided property 249/1-A jointly owned by Smt. Divya Rane, who is one of the co-owner, wife of Shri. Vishwajit Rane, without the consent of the other co-owners and in the absence of the NOC for the subdivisions;

- (iv) That the Opponent No. 1 issued NOC dated 23/12/2005 to the Village Panchayat Taleigao to issue the occupancy certificate to one Shri. Andrew Fernandes for the occupations of the bungalow which was illegally constructed in the plot, in the property bearing survey No. 250/4 without conversion sanad from the Collector;
- (v) That the Opponent No. 1 granted NOC dated 15/2/2007 to M/s. Maridiane Estate Private Limited co-owned by said Smt. Divya Rane to regularize illegally constructed compound wall on the portion of the property bearing survey No. 249/1-A and also on the Government land reserved for Dona Paula, Bambolim road widening to the extent of 30 mts. within the ODP approved by the Opponent No. 1 himself and on the basis of the said NOC issued by the Opponent No. 1, Village Panchayat Taleigao regularized the compound wall illegally constructed by the said company;
- (vi) That there are about 6 bungalows including the bungalow No. 22/140 which have been constructed in violation of the LRC, Panchayat laws and the Opponent No. 1 did not take any action even though the Complainant lodged a complaint dated 5/2/2007 before the Opponent No. 1.

12. Therefore, the Complainant alleges that the Opponent No. 1, deliberately with ulterior motive, did not provide access to the relevant/concerned file in order to hide/cover up these illegalities. The Complainant reiterated the contents of the complaint in his affidavit-in-rejoinder and dealt in detail the reply filed by Opponent No. 1. The Complainant has produced copies of the number of documents in support of his affidavit-in-rejoinder. The Opponent No. 1 filed affidavit-in-sur rejoinder denying the allegations made by the Complainant. The Opponent also filed

a reply to the application filed by the Complainant regarding the production of envelope in which the notice was issued by this Commission. The Opponent No. 2 has also filed his affidavit.

13. Both the parties have filed their written submissions. It is an admitted fact that Complainant vide his application dated 30/3/2007 received in the office of the Opponents on the same day, requested for the inspection of the file in respect of NOCs/clearances issued by the office of the Opponents for the development of the property bearing survey No. 250/4 of Taleigao village, Tiswadi – Goa and putting construction/buildings therein situated at Dona Paula and to have copies of the applications for NOCs, plans, orders, notings and other documents there from. (emphasis added by us) The Complainant in the said letter also requested for fixing the date and time for the purpose of inspection so that the list of the documents of which the Complainant required the copies be prepared and furnished to the office of the Opponents.

14. In response, the Opponent No. 1 informed the Complainant by letter dated 25/4/2007 that his application was considered and the Complainant was requested to visit the office to carry out the inspection on 30<sup>th</sup> April, 2007 at 10.30 a.m. of the file bearing No. NGPDA/185 bearing survey No. 250/4 to Taleigao village. Accordingly, the Complainant visited the office of the Opponent on 30/4/2007. However, on inspecting the file bearing No. NGPDA/185, the Complainant found that the said file contained papers relating to the NOC issued by the Opponents for the occupancy certificate to one Shri. Andrew Fernandes. The said file bearing No. NGPDA/185 did not contain the documents like NOCs/clearances for the development of the property bearing survey No. 250/4 as well as the putting up of the construction/buildings in the property bearing survey No. 250/4 of Taleigao village. Therefore, the Complainant made an endorsement on the application stating that the concerned/relevant file wherein the NOCs/clearances issued by the Opponent for the development of the property surveyed under No. 250/4 of Taleigao village and the NOCs/clearances issued for the construction of buildings were not available in the said file which was given to the Complainant for inspection. The

Complainant also brought this fact to the notice of the Opponent No. 2. Subsequently, the Complainant addressed the letter dated 2/5/2007 to the Opponent No. 1 inviting his attention to the endorsement made by the Complainant as well as bringing out to his notice that the concerned file pertaining to the issue of NOCs/clearances for the development of the property bearing survey No. 250/4 and putting up constructions/buildings have not been made available to the Complainant for inspection. The Complainant says that he has made several visits to the office of the Opponent No. 2 and his last visit was on 22/5/2007 at about 11.30 a.m. which has not been denied by the Opponent No. 2.

15. In terms of sub-section (1) of section 7 of the RTI Act, the Public Information Officer has to provide the information to the applicant as expeditiously as possible but not later than 30 days from the date of the request. In the present case, the application of the Complainant was received on 30/3/2007 and therefore, the last date for providing the information to the Complainant was 30/4/2007. Though the Act has laid down maximum time limit of 30 days, it is to be noted that the information has to be provided as expeditiously as possible. The Opponent No. 1 issued the letter to the Complainant on 25/4/2007 requesting the Complainant to inspect the file on 30<sup>th</sup> April, 2007 i.e. last date by which the Opponent No. 1 ought to have completed the process of providing access to the Complainant. Though the Opponent No. 1 fixed date for inspection on 30<sup>th</sup> April, 2007, relevant/concerned file was not made available for inspection to the Complainant. The Opponent No. 1 has not explained as to why the Opponent No. 1 could not fix the date for inspection prior to 30<sup>th</sup> April, 2007. The Opponent No. 1 should have ensured that the correct file was made available for inspection to the Complainant. The Opponent No. 1 submitted that the file bearing No. NGPDA/185 contained part of the information sought by the Complainant. Admittedly, the said file bearing No. NGPDA/185 contained only papers relating to the issue of NOCs for occupancy certificate and did not contain any papers pertaining to the issue of NOCs/clearances for the development of property as well as for putting up the construction of buildings.



16. Assuming that the part of the information was provided to the Complainant, it is not understood as to why the other records pertaining to the issue of the NOCs/Clearances for the development as well as for construction of buildings were not kept in the same file. Even the file which was made available to the Complainant for inspection were not given the page numbers. The Complainant has alleged that the Opponent had not indexed and catalogued the records in the file. It is to be noted that section 4 (1) (a) of the RTI Act casts an obligation on the Public Authority to index and catalogue the records.

17. It is also pertinent to mention here that the RTI Act provides that complete and correct information has to be provided to the citizens. In the present case, the Opponent No. 1 has admitted that part of the information Complainant. The Opponent No. 1 requested the Complainant to carry out the inspection of the relevant files on 07/06/2007. The application of the Complainant was dated 30/03/2007 and, as stated earlier, the last date for providing the inspection was 30/04/2007. The Opponent No. 1 had fixed the date for inspection on 07/06/2007 i.e. after 42 days from the date of expiry of 30 days as provided in the RTI Act. Hence, there has been a delay of 42 days in providing an inspection of the concerned file by the Opponent No. 1 to the Complainant.

18. We have gone through the complaint of the Complainant, the replies filed by the Opponents, affidavit-in-rejoinder, affidavit-in-sur-rejoinder and the other documents produced by both the parties as well as written submissions. The Complainant has made out the prima facie case against the Opponent No. 1 under section 20 of the RTI Act. We are also prima facie satisfied that this is a fit case to proceed against the Opponent No. 1 under section 20 of the RTI Act as the Opponent No. 1 has not justified or explained the delay of 42 days and the intention of the Opponent No. 1 did not appear to be bonafide. There is sufficient evidence brought on record by the Complainant to proceed against the Opponent No. 1 under section 20 of the RTI Act.

19. Coming now to the prayers of the Complainant the Complainant has

prayed for an order directing the Opponents to pay to the Complainant the fine of Rs. 250/- per day delay as per section 20 of the Act which empowers the Commission to impose the penalty on the Public Information Officer for causing delay in providing the information or providing incomplete, incorrect, misleading and false information. The said section does not provide that the Complainant or the Appellant is entitled to the penalty imposed by the Commission under section 20 of the Act. The penalty so imposed by the Commission is to be credited or deposited under the appropriate receipt heads of the concerned Public Authority.

20. The Complainant has also prayed that the disciplinary proceeding be recommended against the Opponents in accordance with the Civil Service Regulations. The Complainant has also prayed for the order/direction to the Opponents to comply with the above process of giving information within the period of 30 days. And lastly the Complainant has prayed for issuing direction/orders to the Opponents to prepare the catalogues, indexes and paging of the files/records/documents in their possession.

21. As stated above, there has been a delay of 42 days in providing the inspection to the Complainant by the Opponent No. 1. The delay has not been justified and there is enough material to presume, prima facie, that the delay has been caused deliberately and malafidely. The total penalty comes to Rs. 10,500/- for the delay of 42 days at the rate of Rs. 250/- per day. Therefore, the Opponent No. 1 as Public Information Officer, is given an opportunity to show cause as to why this penalty of Rs.10,500/- should not be imposed on him on 31-01-2008 at 11.00 a.m.

22. The Complainant has prayed for imposing the penalty on the Opponent No. 2. The role of the Opponent No. 2 under the RTI Act is limited to receive the applications or Appeals meant for the Appellate Authority or the Commission and forward the same to the concern authority within 5 days. It is the Public Information Officer who is solely responsible for providing the information to the citizen within the stipulated period. Hence, we are not inclined to start any penalty proceedings against the Opponent No. 2 or to recommend any disciplinary action against him.

23. We are also not inclined to grant the prayer of the Complainant to recommend disciplinary action against the Opponent No.1, as this is the first instance, which has come to the notices of the Commission. As regards the prayer of the Complaint to direct the Opponents to index and catalogue the records, the Commission has already passed an order in Appeal No. 79/06 directing the Chief Town Planner of the Town and Country Planning Department to take up the work of indexing and cataloguing of the records as required by section 4 (1) (a) of the RTI Act and therefore we feel that there is no need to issue a fresh direction in this regard. Regarding the other prayer of the Complaint of giving directions to the Opponent to complete the process of giving information within the specified time limit, we feel that it is not necessary to give such direction as it is the duty of the PIO under the RTI Act to provide information within the prescribed time limit.

24. In the present Complaint, we have observed that the Complainant has been put to much inconveniences and hardships and the detriment has been caused to him. No doubt, the Commission is empowered to award compensation to the Complainant for any loss or detriment suffered in terms of clause (b) of sub-section (8) of section 19 of the Act. These provisions are contained in sub-section (8) of section 19 of the Act, which relates to Appeals. In the case No. 7/2006 Agnes D'Silva v/s the PIO, Village Panchayat of Calangute, the Commission has awarded the compensation in a complaint filed under section 18 of the RTI Act. However, the said decision of the Commission has been challenged before the Hon'ble High Court at Judicature Bombay on the ground that the provisions of sub-section (8) of section 19 cannot be made applicable to the complaints filed under section 18 of the RTI Act. Hon'ble High Court has stayed the decision of this Commission vide its order dated 04/09/2007 in the Writ Petition No.327/2007. Therefore, we are also not in a position to award any compensation to the complainant.

25. The Commission also cannot award any cost to the complainant for want of provisions in the RIT Act though this is a fit case for awarding some cash to the Complainant.

26. In view of the above, we pass the following order:

**O R D E R**

The Complaint dated 24/05/2007 is partly allowed. The Opponent No.1 is directed to show cause as to why a penalty of Rs. 250/- per day should not be imposed on him for the delay of 42 days allowing the inspection of documents requested by the Complainant. The case is posted on 31/01/2008 at 11.00 a.m. for further hearing.

Pronounced in the open court on this 10<sup>th</sup> day of January, 2008.

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

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