

GOA STATE INFORMATION COMMISSION

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

Complaint No. 12/2006/Co-op.

Nakul Naik
C/o Variety Stores,
Panaji - Goa.

.....

Complainant.

V/s.

Public Information Officer,
Registrar of C-operative Societies,
Mala, Panaji - Goa.

.....

Opponent.

CORAM :

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

(Per A. Venkataratnam)

Dated : 19/10/2006.

Adv. A. G. Damle for the Complainant.

Adv. Irshad Agha for the Opponent.

ORDER

The request under Section 6 (1) of the Right to Information Act, 2005 (RTIA in brief) was made by the complainant on 24/05/2006 on 4 points. The opponent has replied to him on 25/05/2006 refusing the information with reasons. The complainant thereafter has filed this complaint on 20/07/2006. The notices were issued to both parties. Both of them have submitted their written arguments. On the day of arguments, Adv. Damle for the complainant and Adv. Agha for the opponent have argued the case before us.

2. The case of the complainant is that though a reply was sent to him in response to his request for information, it does not contain any information because for the first question asked by him he was asked to give clarification and for the next two questions the information was avoided stating that it is sub-judice and the last question was replied by asking him to go to the Police Station where the opponent's office has filed an FIR against one of its own officers among others.

...2/-

3. The brief facts are that the Registrar of Goa Co-operative Societies (hereinafter referred as the RCS) appointed an Administrator by his order dated 20/10/2005 to a Co-operative Society called the Janata Consumers Co-operative Society Limited, Panaji in exercise of his powers vested under Section 78 of the Maharashtra Co-operative Societies Act, 1960 as applicable to Goa. Thereafter, certain facts have come to his notice, which compelled his Department to file an FIR against the Administrator and its employees of the Society on 28/12/2005. Thereafter, another Administrator was appointed by name Mr. Tuenkar on 30/12/2005. The Administrator has published an election schedule and actually conducted election to the Managing Committee of the Society on 29/01/2006 and the report of an election was submitted to the RCS on 30/01/2006 and 3/2/2006. This has not been denied by the opponent. Thereafter, another schedule of election was published and was held on 19/02/2006 to the Managing Committee of the same Society. The circumstances under which the previous election was cancelled and the second election was conducted are not on record and we do not have any jurisdiction to go into merits of the election disputes. We are told that the matter is already before the appropriate forum. Thus, there were 2 administrators appointed to the Co-operative Society, 2 elections held, and the charge handed over to one elected body. We have mentioned these details only to appreciate better the information asked by the complainant and denied to him. Now in this context, the complainant has asked the following questions to the opponent: -

- (i) The term of the Administrator of the Society expired on 1/2/2006 but he was holding charge till 24/02/2006 and during this period he has done illegal acts. If any disciplinary action was taken against the Administrator, if yes, what action has been taken?
- (ii) Questions 2 and 3 relate to the change of election programme and the action taken by the Department against the Administrator.
- (iii) Question 4 is about the progress of investigation in the FIR lodge by the Department on 28/12/2005 for misappropriation of funds of the Janata Consumers Co-operative Society, against its first Administrator and others.

The replies furnished by the opponent are:-

- (i) The complainant should clarify what are illegal acts about which he wants to know the information and for the questions 2 and 3 that the matter is sub-judice and regarding Police case he has to approach the Police Station himself to know further progress.

4. During the arguments, the complainant's Adv. Damle insisted that the very fact that the Administrator Shri Tuenkar continued illegally shows all actions taken by him as Administrator from that date till he handed over charge on 24/2/2006 are illegal and that his very act of handing over charge on 23/2/2006 without approval of the RCS to an elected body as per the second election programme is illegal. He has submitted that the election law provides that 7 days after an election report was submitted by the Administrator, the RCS is bound to accept it. Having submitted the election report on 30/1/2006 and 3/2/2006, the first penal of elected representative has become the legal committee 7 days thereafter even though the RCS has not accepted it. Hence, continuing of Shri Tuenkar as Administrator is illegal. The learned Adv. Agha on the other hand joining issue stated that as per the provisions of the Act, the term of office of the Administrator gets automatically extended till the new committee is duly constituted. This is in accordance with proviso to sub-section (6) of Section 78 of the Maharashtra Co-operative Societies Act applicable in Goa.

5. We have already stated above that this is not the forum to decide the election disputes. All we have to do is to facilitate the free flow of correct, complete and relevant information. We have to see that the Public Authorities do not camouflage their replies so as to conceal, confuse or deny the information. As in this case, we have observed that instead of saying clearly and unambiguously that Shri Tuenkar is legally entitled to be the Administrator of the Janata Consumer Co-operative Society beyond the expiry of the term of his office on 01/02/2006, by virtue of the provisions of the law, now quoted before us. Of this information could be stated at the time of hearing the complaint, we do not see why the same information could not be shared with the complainant at the relevant time. It is this kind of devious information, which gives rise to suspicion in the minds of the citizens regarding reliability of the administrative process. With this view, we hope that the Public Authorities in future will be

more forthright and clear in their replies so that the objectives of the RTI Act namely the transparency and openness in the administration is better served. We leave this issue at this point.

6. The replies to the next 2 questions are equally mysterious. The questions are regarding the disciplinary action proposed to be taken against the Administrator for changing the election programme even though election has already been held. To support this contention, the complainant has submitted the photocopies of file notings of the office of the RCS wherein one of the officers has given his opinion that cancellation of earlier election programme and finalisation of another programme is not in accordance with law. Based on these notings, the complainant wanted to know what further action is being taken against the then Administrator for changing the election schedule, more so, after the election is conducted and the report of the election is submitted to the RCS. Now the straight and simple answer to the question would be either the Department not contemplating to take any action or has not yet decided about action to be taken or decided not to take action against its official. Instead of giving one of these straight replies, the reply saying it is sub-judice can be considered as a vague reply and is also an inaccurate reply. Even before this forum, the opponent has not come forth clearly what is sub-judices before the ARCS. The written reply on above of the opponent says that: -

“These internal noting are amenable any time. That in case any mistake is found by the writer, the same can be corrected subsequently. It is also fundamental principle by law that Roznama that is written down is not law. Hence, the complainant cannot take advantage of the said noting”. To say the least, we are appalled by these arguments. It is precisely for this reason namely, that the file notings could be altered subsequently, the present law is enacted. While, it is not denied that different officials can have different opinions about the same matter, it cannot be said that no relevance can be placed on the file notings by the complainant to advance his arguments in any matter to prove his case. Further, how file notings have become Roznama is also not clear to us. Finally, the reply to the question of initiating action against the then Administrator, as per questions 2 and 3 are the subject matter of judicial or quasi-judicial proceedings is not borne out by records placed before us. On the other

hand, it appears to us that the opponent has avoided his responsibility placed on him under Section 7 (1) of the RTI Act to provide the correct information about the proposed action against the then Administrator. Lastly, the progress of the criminal complaint lodged with the Police should have been ascertained by the Department even if it is not informed to the complainant. We say this because the complaint is lodged by the Department and not by the Co-operative Society and involves its own employee who was appointed as an Administrator of the Co-operative Society. In the normal circumstances, the Society whose funds was misappropriated should have followed up the matter with the Police but this is not the case here.

7. With the above discussion, we direct that correct information on all the points be given to the complainant within a period of 15 days from today. The letter dated 25/05/2006 of the opponent is hereby set aside.

8. Normally, we would have left the matter after receiving compliance of the above order. However, as the above discussion reveals, not only the information was denied but misleading and incorrect information was provided to the complainant. As the correct information is also known to the opponent, prima facie, it appears that the information was suppressed with malafide intention. Hence, we direct the opponent to show cause as to why a penalty of Rs.250/- (Rupees two hundred fifty only) per day should not be imposed on him under Section 20 of the RTI Act. The cause should be shown on 3/11/2006 at 11.00 a.m. The PIO should remain present in person before the Commission on the above date and time without fail.

Pronounced in the open Court.

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

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