

GOA INFORMATION COMMISSION

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

Complaint No. 23/2008

Mr. Orlando Barneto,
1252, Chowgule College Road,
Agali, Gogol, Margao - Goa.

..... Complainant.

V/s.

1. The Public Information Officer,
The Chief Officer,
Margao Municipal Council,
Margao – Goa.
2. The first Appellate Authority,
The Director,
Municipal Administration/Urban Development,
Panaji – Goa.

..... Opponents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 13/08/2008.

Complainant in person.

Adv. G. N. Agni for the Opponent No. 1.

ORDER

This complaint was filed initially as the second Appeal No. 03/2008. However, the Complainant has no grievance against the first Appellate Authority under the Right to Information Act, 2005 (hereinafter called as the RTI Act). As a second appeal can be filed only against the order of the first Appellate Authority, the second appeal in this case is not maintainable. However, the learned Adv. Mr. G. N. Agni for the Opponent No. 1, though has raised this point in his written statement before us, did not press for the dismissal of the appeal during the personal hearing. Therefore, the Commission has converted this second appeal into a complaint No. 23/2008.

2. Notices were issued and a statement was filed by the Opponent No. 1 through his Advocate. The Complainant besides arguing personally, has also submitted written arguments. The brief facts are that the Complainant has submitted two requests one on 01/09/2007 on 10 points and another request on 30/01/2008 with 13 questions. Both the requests were replied by the Public Information Officer i.e. Opponent No. 1 herein on 9/11/2007 and 29/03/2008 respectively. The Complainant was not satisfied with the reply and has gone in a

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first appeal. The first Appellate Authority, the Opponent No. 2 herein, has disposed off the appeal with a direction "to furnish detailed information to the specific questions raised in the appellant's letter dated 01/09/2007 within period of 10 days". As a detailed reply was already given by the Opponent No. 1 to each question separately even before first appeal was filed, the learned Adv. Agni contended that the first Appellate order dated 07/01/2008 is mechanical, a routine order without application of mind by the first Appellate Authority. The first Appellate Authority, though notified, did not appear before us nor submitted any statement.

3. The case of the Complainant is that the Opponent No. 1 has given misleading, incorrect and false replies to him. The learned Adv. Agni has contended this and took us through both the requests and the replies furnished by the Opponent No. 1. His contention is that factual information was given to the each question/point and if the Complainant has got still grievances, this is not the forum for the redressal of his grievances. Certain questions, asking for the reasons of the Municipal Council of Margao taking a particular course of action was challenged. The contention of the learned Adv. Agni is that no reasons could be asked for by a citizen to the public authority as per a recent decision of Hon'ble High Court of Bombay, Panaji Bench in Celsa Pinto V/s. Milan G. Natekar & another in Writ Petition No. 419/2007. Specifically, the Complainant has a grievance that the Municipal Council has given an occupancy certificate to Smt. Jesuina Requela Dias and Smt. Filomena Dias e Monteiro in respect of three flats on first floor and three flats on second floor and one residential House No. 4 comprising of one office (G-2) and one flat (GF-1) on the Ground Floor and one car porch (B-4) of Building B. The Margao Municipal Council did so without the completion certificate from S.G.P.D.A., Margao. Further, a number of irregularities committed by the owners were pointed out by the Complainant to the Municipal Council and were also raised during the course of hearing of this complaint before us. We agree with the learned Adv. Agni that these are not the matters for decision before this Commission. All we have to see is whether the information is given by the Public Information Officer to each of the request of the Complainant and if there is any inconsistencies are found in the replies, whether Opponent No. 1 is able to explain them.

4. During the course of the hearing, one point was highlighted namely that in reply to the question No. 6 of the request dated 01/09/2007 of the Complainant, the reply was given by the Public Information Officer that the occupancy certificate given is a part occupancy and the final occupancy certificate for the balance part of the building is yet to be issued. The contention

of the Complainant is (i) no occupancy certificate could be given in the absence of the completion certificate issued by the SGPDA; (ii) that the reply given by the Public Information Officer to the 6th question as mentioned above is patently wrong as the occupancy certificate dated 01/08/2006 issued by the Opponent No. 1 and exhibited by the Complainant does not say that it is a "part occupancy certificate".

5. We have already disposed off the first objection, namely, that the Complainant has to approach the competent forum regarding the issue of occupancy certificate when the SGPDA has not given its completion certificate. To answer the second part however the learned Adv. Agni has relied on an internal note of the Municipal Council dated 12/02/2007 submitted by the Engineering Department to then Chief Officer of Municipal Council and issued to the Complainant wherein it was mentioned that the Council has issued the part occupancy and asked the builder to revise the plans incorporating all deviations and get the approval from SGPDA before issuing final occupancy certificate. Thus, what the Municipal Council has issued is only part occupancy certificate. However, we are not inclined to think so as no such condition is mentioned in the occupancy certificate as occupancy certificate issued on 01/08/2006. Further, we are constrained to state that the occupancy certificate was issued on 1/08/2006 and note relied by the Adv. Agni is of 12/02/2007 and the reply to question 6 was issued on 09/11/2007. We, therefore, agree that the reply given by the Opponent No. 1 to the question No. 6 of the request dated 01/09/2007 is not correct. However, we are not satisfied that it is a malafide act of the Opponent No. 1 and therefore, we are not inclined to take any punitive action against him. Nevertheless, we direct that the reply be corrected for that question and send the correct answer again to the Complainant within next 10 days for that question No. 6.

6. With these observations, complaint is partially allowed.

Announced in the open court, on this 13th day of August, 2008.

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

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