

GOA INFORMATION COMMISSION
Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Complaint No. 26/2007-08/GP

Smt. Surekha M. Naik
356, Porascodem,
Pernem - Goa.

..... Complainant.

V/s.

The Public Information Officer,
The Secretary,
Gram Panchayat Khajana-Amere-Poraskode,
Tal, Pernem - Goa.

..... Opponent.

CORAM:

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

(Per G. G. Kambli)

Dated: 05/10/2007.

Adv. Shri Bhupesh Prabhudesai for the Complainant.

Adv. Shri Santosh S. Keni for the Opponent.

JUDGEMENT

By two separate applications both dated 6/7/2007, the Complainant herein requested the Opponent to furnish certain information under the Right to Information Act, 2005 (hereinafter referred to as the Act).

2. The Complainant submits that the Opponent provided incomplete, misleading and false information and therefore, the Complainant has prayed for imposition of penalty on the Opponent for providing incorrect information and also direction to the Opponent to provide the correct information. The Complainant also alleges that the Opponent has not given the reasons for rejecting the information and also not provided the particulars of the Appellate Authority and time limit within which appeal is to be preferred before the first Appellate Authority.

3. On perusal of the application dated 6/7/2007, it is seen that the Complainant sought the information on 6 points in respect of houses bearing

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Nos. 357/1 and 357/2 situated in survey No. 1/2 of Porascodem village in Pernem taluka. In another application dated 6/7/2007, the Complainant sought the information on 7 points in respect of service centre belonging to Shri Dnyaneshwar Haldankar situated in survey No. 2/17 of Porascodem. The grievances of the Complainant are that the Opponent did not provide the correct information on 4 points namely at Sr. Nos. 1, 2, 5 and 6. As far as the information pertaining to point No. 1 is concerned, the Opponent while furnishing the information on point No. 2 has given the details of the house numbers. It is not understood what further details are required by the Complainant as the Complainant has not indicated clearly the registration details. Regarding point No. 2, the Opponent has informed that the plan has not been approved by the concerned Town and Country Planning Department and the copy of the plan is not available in the Panchayat office. The Opponent has also further informed that no construction licence was issued. Therefore, we feel that the Opponent has provided the information to the Complainant. On point no. 5, the Complainant sought to know as when the house was assessed for the first time for tax and the copy of the house tax receipts for that year. The Opponent has not provided this information to the Complainant. The Complainant also sought the inspection of the relevant file and neither the inspection nor any reply is given by the Opponent.

4. So far as the other application of the Complainant is concerned, the Complainant sought information on 7 points pertaining to service centre. The Complainant alleges that the Opponent has not provided the correct information on the points at serial nos. 1, 5, 6 and 7. At point No. 1, the Complainant sought the information pertaining to the registration details of the service centre. The Complainant submits that Opponent has not given the number allotted to this service centre and only vague answer is given. The Complainant has also not given the details of the registration in respect of which the information is required. However, the Opponent could have provided the house number of this service centre. At point No. 5, the Complainant sought the information as regards to the assessment of the said service centre for the purpose of the house tax for the first time and also house tax receipt. Admittedly, the Opponent did not provide this information to the Complainant. At point No. 6, the Complainant also sought the inspection of the file to which the Opponent reply that the Panchayat has issued NOC to start business activities. This reply is not

sufficient. At point No. 7, the Complainant wanted to know all the structures identified by the Panchayat as illegal structures and the transgression report of the same. The reply given by the Opponent is very vague.

5. The Opponent filed the reply and submitted that whatever information sought by the Complainant was provided. The Opponent also took the preliminary objection stating that the present complaint is not maintainable as no first appeal has been filed under the Act.

6. Both the parties were represented by their Advocates. Shri Bhupesh P. Dessai, the learned Advocate appeared for the Complainant and Shri Santosh S. Keni, learned Advocate appeared for the Opponent. The learned Advocate for the Complainant submitted that even though the appeal is not preferred before the first Appellate Authority under Section 19(1) of the Act, yet the complaint under Section 18 is maintainable as it is an independent Section. He also submitted that the Opponent did not provide the details of the first Appellate Authority and the time limit within which the first appeal was to be preferred or filed as required by Section 7(8) of the Act. Shri S. S. Keni, the learned Advocate for the Opponent contended that the complaint under Section 18 is not maintainable unless the remedy of first appeal under Section 19(1) of the Act is exhausted. He also submitted that the Opponent did not reject the request of the Complainant and therefore, the compliance of the provision of Section 7(8) of the Act did not arise. He also submitted that this is the new Act and the Opponent being the Public Information Officer who is very lower in rank is not aware of the provision of this new law.

7. We have gone through the complaint as well as through the reply filed by the Opponent. We have also considered the arguments advanced by the learned Advocates for both the parties. We will first deal with the preliminary objection raised by the learned Advocate for the Opponent. It is no doubt that the Complainant could have filed an appeal before the first Appellate Authority under Section 19(1) of the Act. In the present case, the Complainant has prayed for imposition of the penalty upon the Opponent. Admittedly, the first Appellate Authority has no powers to impose any penalty on the Public Information Officer and therefore, the Complainant could not approach the first Appellate Authority with the prayer of imposition of penalty under Section 20 of

the Act. The power to impose penalty is vested only with the Commission and not with any other authority under the Act and therefore, if the Complainant had approached the first Appellate Authority under Section 19(1) of the Act, it would have been futile exercise. Being so, the Complainant has rightly approached this Commission under Section 18 of the Act. Therefore, we overrule the objection raised by the Opponent.

8. Coming now to the merits of the complaint, we have discussed herein above, that the Opponent has not provided the complete information to the Complainant on points No. 5 and 6 of the application wherein the Complainant has sought the information in respect of houses bearing No. 357/1 and 357/2. Similarly, the Opponent has also not provided the complete information to the Complainant on the points No. 1, 5, 6 and 7.

9. In the instance case, the Complainant is seeking the information pertaining to the third party and therefore, it was incumbent upon the Opponent to give notice and follow the procedure laid down in Section 11 of the Act. In view of the above, we pass the following order: -

ORDER

10. We direct the Opponent to provide the information on point No. 5 of the application seeking information in respect of houses bearing No. 357/1 and 357/2 and on points No. 5 and 7 in respect of the application seeking information of the service centre. So far as the inspection of file is concerned, the Opponent may follow the procedure laid down in Section 11 of the Act and take an appropriate decision in the matter and communicate the same to the Complainant within 3 weeks from the date of this order.

11. We are not inclined to grant the prayer of the Complainant to impose the penalty upon the Opponent. Accordingly, the complaint is partly allowed.

Announced in the open court on this 5th day of October, 2007.

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

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

/sf.

