

GOA STATE INFORMATION COMMISSION

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

Complaint No. 29/2006/DIP

Shri Joao C. Pereira
H. No. 40, Acsona - Utorda,
Majorda, Salcete - Goa.

..... Complainant.

V/s.

Shri Menino Peres
Director of Information
and Publicity,
Panaji - Goa.

..... Opponent.

CORAM :

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

(Per A. Venkataratnam)

Dated: 08/11/2006.

Complaint under Section 18 of the Right to Information Act, 2005.

ORDER

This disposes off the complaint dated 17/7/2006 and 28/7/2006 filed by the Complainant against the opponent under Section 18 read with Section 20 of the Right to Information Act, 2005 (for short RTI Act) against the opponent.

2. The case of the Complainant is that the Complainant had addressed a letter dated 22/10/2005 to the Hon'ble Chief Minister of Goa regarding the implementation of the RTI Act in the State of Goa stating therein that the provisions of the RTI Act have come into force w.e.f. 12/10/2005. The Complainant wanted to know whether the Goa Right to Information Act, 1997 is still in force or repealed since under the old Act, 1997 appeal has to be filed before the Administrative Tribunal and as per the RTI Act, the appeal is to be filed before the Head of Department. The said application of the Complainant was marked to the opponent and therefore, the Complainant approached the opponent in the office of the opponent twice to enquire regarding the implementation of the RTI Act in Goa alongwith his friend Shri Lazarus

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Cardozo. However, the Complainant alleges that the opponent abused the Complainant by filthy and dirty language and warned him not to visit the office of the opponent. The Complainant, therefore, filed a complaint to the Hon'ble Chief Minister of Goa vide his complaint dated 10/2/2006 for taking suitable action against the opponent. The Complainant has also relied upon a copy of the letter dated 27/3/2006 alongwith its enclosure addressed to the Chief Secretary of Goa by the Central Information Commission.

3. The Complainant, therefore, prayed that necessary action be taken against the opponent under Section 20(2) of the RTI Act. A notice was issued to the opponent and the opponent has filed his reply dated 28/9/2006. The opponent has admitted that the Complainant has approached him for the inquiries of the officers designated under the RTI Act in Police Department and the Complainant has also submitted an application to that effect. The opponent further says that the opponent informed the Complainant to submit the application to the Police Department instead of to the Information Department as the Complainant could get the information early. At that moment, the opponent says that he received a phone call from the Secretariat and left the office informing the Complainant that the application would be forwarded to the concerned Department as required under Section 6 (3)(ii) of the RTI Act. The opponent has also stated that the application of the Complainant was forwarded to the Police Department under letter dated 21/2/2006 and 11/4/2006. The opponent has denied of having abused the Complainant.

4. The Complainant filed his Affidavit alongwith that of a witness who was present at the time of the incident reiterating the allegations contained in the complaint. The opponent has also filed the Affidavit denying the allegations.

5. The Complainant in his complaint has stated that the incident has taken place in the cabin of the opponent where the Complainant, his friend Lazarus Cardozo and Shri V. V. Sawant, Information Officer presently working as Under Secretary to this Commission were present at the time of the incident. The Commission has not recorded any say of Shri V. V. Sawant in this matter. The Complainant wanted to make inquiries regarding the implementation of the RTI Act vis-à-vis Goa Right to Information Act, 1997. The Complainant also stated that the opponent being Nodal Officer of the Government Incharge of the

implementation of the RTI Act, the Complainant was directed by the office of the Hon'ble Chief Minister to approach the opponent for necessary information. It is seen that the Complainant by letter dated 17/1/2006 in reply to the letter dated 23/11/2005 requested the opponent to inform whether there were any changes in the list of the Public Information Officer's of the Police Department. The Complainant also requested for a copy of the order dated 5/1/2006 issued by the Police Department notifying the Information Officers. Subsequently by another application dated 27/1/2006, the Complainant requested the opponent to inform the name and present address of the Director General of Police who was holding the charge as on 9/8/2005 under the RTI Act. The opponent states that he has forwarded the application of the Complainant to the concerned Police Department. The first application is dated 17/1/2006 and second application dated is 27/1/2006. The opponent has forwarded the copy of the letter dated 6/4/2006 of the Complainant to the Superintendent of Police (HQ) with the designation as Asst. Public Information Officer under letter dated 11/4/2006. The incident has taken place on 10/2/2006 and therefore, the letter dated 06/4/2006 of the Complainant relied upon by the opponent is not at all relevant. That apart the opponent has addressed this letter to the Superintendent of Police (HQ) as APIO when the Superintendent of Police (HQ) has been designated as Public Information Officer and not APIO. The second letter relied upon by the opponent is dated 21/2/2006 addressed to the Director General of Police. In this letter, no reference is made to the application of the Complainant. It is not clear whether the application dated 17/1/2006 was forwarded to the Director General of Police under Section 6 (3)(ii) of the RTI Act.

6. In terms of the provisions of sub-section (3) of Section 6 of the RTI Act, the application has to be transferred immediately as soon as practicable but in no case later than 5 days from the date of the receipt of the application. Admittedly, the opponent has forwarded the application of the Complainant under letter dated 21/2/2006, which is more than a month. The provisions of sub-section (3) of Section 6 are mandatory and therefore, it is the duty of the Public Authority to transfer the application immediately but not later than 5 days. Therefore, the opponent has violated the provisions of sub-section (3) of Section 6 of the RTI Act. It is also pertinent to mention here that the incident took place on 10/2/2006 and the Complainant addressed the complaint to the Hon'ble Chief Minister on the same date. Being so, forwarding the application of the

Complainant after a month is nothing but an after thought. The opponent has stated in reply that he informed the Complainant that his application would be forwarded to the concerned Department as required by Section 6(3) (ii) of the RTI Act and therefore, the opponent was very well aware of the provisions of the sub-section (3) of Section 6 of the Act that the application needs to be forwarded within 5 days to the concerned Department. Thus knowing fully well, the opponent has forwarded the application of the Complainant to the Director General of Police on 21/2/2006 and that too without making any reference to the application of the Complainant. Thus, the opponent is responsible for causing the delay in providing the information to the Complainant within the statutory period. The application itself was forwarded after the expiry of the statutory period, which has contributed the delay in providing the information, by not forwarding the application of the Complainant within the statutory period of 5 days. The opponent has not only caused the delay but obstructed in furnishing the information within the statutory period of 30 days. No explanation has come from the opponent as to why the opponent took such a long time in just forwarding the application. In fact, the opponent being the Ex-Officio Joint Secretary Incharge of the Department, which is administering the Act the opponent, ought to have ensured the compliance of the provisions of the RTI Act in as much as the instructions are issued by his Department to other Government Departments/organizations for compliance of the provisions of the RTI Act.

7. Being so, the opponent is responsible for causing the delay in providing the information and thereby putting the Complainant into loss and detriment. We feel that this is a fit case where the Complainant is to be compensated as the opponent has failed to discharge his statutory duties under the RTI Act. We, therefore, direct the opponent to pay to the Complainant a sum of Rs.1000/- as a compensation for causing loss and detriment in terms of Section 19(8)(b) of the RTI Act. This amount should be paid from the salary of the opponent for the December, 2006.

8. The Complainant states that he approached the opponent since the opponent was Incharge of the implementation of the RTI Act being Nodal Officer. In fact, the opponent was acting as a Nodal Officer of the Commission. This Commission sought a copy of the order appointing the opponent as Nodal Officer of the Commission alongwith duties and functions assigned to it vide letter dated 19/6/2006. As the information was not forthcoming from the

opponent, a reminder dated 4/7/2006 was issued requesting the opponent to expedite the reply. However, the opponent deliberately ignored to send any reply to this Commission's letter referred to above and therefore, the Commission was compelled to write to the Special Secretary (Information and Publicity) vide letter dated 18/7/2006. Surprisingly, thereafter, the Commission received a letter dated 20/7/2006 from the opponent informing that the Government has not issued any order to the opponent appointing him as Nodal Officer for the RTI Act. Prior to that the opponent was acting as a Nodal Officer of the Commission. The reply to the Commission's letter after considerable delay makes the intention of the opponent very clear. The opponent has issued some orders of his staff transferring them to this Commission and directing them to report to the Nodal Officer without having being appointed as a Nodal Officer, the opponent, therefore, committed the offence of impersonation. The opponent, therefore, ought to have been careful in pretending to be the Nodal Officer of the Commission when no such order was issued by the Government as its evident from his own letter No.DI/INF/RTI-Misc/2006/2219 dated 20/7/2006.

9. We, therefore, feel that disciplinary proceedings be initiated against the opponent for violating the mandatory statutory provisions of Section 6(3) of the RTI Act as well as for impersonating as a Nodal Officer of the Commission.

10. The Complainant has made certain serious allegations against the opponent, which needs to be inquired into. The Commission has not recorded the statement of Shri V. V. Sawant who was present when the incident took place. The Commission, therefore, recommends that a detailed inquiry be conducted into the complaint and appropriate action is taken in the matter.

11. The copies of the complaints, Affidavits filed by the Complainant, opponent and the copies of the various correspondence in respect of the appointment as a Nodal Officer be forwarded to the Department of Personnel, Secretariat, Porvorim - Goa for necessary action. The copy of the order be also sent to the Director of Accounts, Panaji for deducting Rs.1000/- from the salary of the opponent and paid to the Complainant.

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

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

