

# **GOA STATE INFORMATION COMMISSION**

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

Complaint No. 41/2006/Co-op.

Bismark Facho  
R/o H. No. 1739,  
Alto Porvorim,  
Bardez - Goa.

..... Complainant.

V/s.

1. Secretary of Sainik Cooperative  
House Building Society Ltd.,  
Defence Colony, Alto,  
Porvorim - Goa

2. The Public Information Officer,  
Asst Registrar of Cooperative Societies,  
North Zone,  
Mapuca.

3. First Appellate Authority  
Registrar of Coop. Societies,  
Government of Goa,  
Panaji - Goa.

..... Opponents.

## **CORAM :**

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

(Per A. Venkataratnam)

Dated: 29/03/2007.

Complainant in person.

Opponent No. 1 in person.

Adv. K. L. Bhagat represented the Opponent No. 2 and 3.

## **ORDER**

The Complainant has filed this complaint to this Commission on 8/12/2006 complaining that certain information asked by him was not given by the Public Information Officer and whatever given was given late. The brief facts are as follows. The Complainant has approached the Secretary of the Sainik Cooperative House Building Society Ltd., hereinafter referred to as the Cooperative Society, Opponent No. 1 herein on 8/6/2006 for certain information

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from the Society requesting for documents. By another request dated 9/6/2006 he requested for 3 more documents. The Opponent No. 1 is registered under the Cooperative Societies Act and hence, is a Cooperative Society. The Society initially by its reply dated 14/6/2006 has refused the information saying that the Complainant should ask for the information from the State Information Commissioner. The Asst Registrar of cooperative societies, Mapuca, opponent 2 herein, is the public Information officer for all types of Cooperative societies in Bardez taluka in which the office of the opponent 1 is located. He has taken cognizance of the request for information and directed the opponent 1 to furnish the information after receiving the prescribed fees. As he has taken the assistance of the secretary to opponent 1, we consider opponent 1 as deemed PIO under the Right to Information Act, RTI Act for short. On the directions from the Asst. Registrar of Cooperative Societies, Mapusa directing the Cooperative Society to give the information, the opponent provided on 18/7/2006 6 documents and collected Rs.60/- from the Complainant. 2 documents were not given by them saying that they are not traceable.

2. Thereupon, the Complainant has approached the first Appellate Authority on 1/11/2006 with first appeal, stating that one document given is not clear and 2 documents, namely one plan annexed to the sale deed dated 2-2-1966 and one sanad issued by the Collector, Goa on 2-3-1978 are not given to him. The first Appellate Authority who is Opponent No. 3 herein, while directing the Opponent No. 1 to furnish the documents accepted its plea that 2 documents which are not traceable and which are perhaps destroyed by fire need not be given as they are older than 20 years on the date of application. He had initially fixed up hearing on 31/10/2006 which he pre-poned to 30<sup>th</sup> October, 2006. However, no hearing took place on 30/10/2006 but was held on 31/10/2006 as originally fixed. An order was subsequently passed on 1/11/2006 and 1 document which was not clear was directed to be given by the Opponent No. 1. As to the fees paid by the complainant, he has directed them to refund the excess fees charged by them. The Opponent No. 1 complied with the order of the first Appellate Authority, gave 1 document and requested the Complainant to come and collect the entire amount of Rs.60/- paid by Complainant earlier and pay whatever is due to the opponent 2 as the PIO. The Complainant did not collect the fees and when a cheque was sent by the Cooperative Society, he has refused to accept it.

3. The present complaint is filed by him on 8/12/2006 praying that the penalty may be imposed on the Opponent No. 1 and Opponent No. 2 namely the Cooperative Society and Asst. Registrar of Cooperative Society for not giving the information in time as also for giving incomplete information subsequently. As to the non-supply of the two documents, he did not make any grievance. After completion of arguments before this Commission, the Complainant has submitted a synopsis of arguments with fresh 4 prayers namely (i) to impose penalty on Opponent No.1; (ii) to refund Rs.60/- by the Opponent No. 1; (iii) to order disciplinary action against Opponent No. 3; (iv) to award compensation to him. As it is not possible to add additional prayers at the time of arguments, these prayers are ignored.

4. Notices were issued to all the parties. Written statements were submitted by all of them and oral arguments were also heard. During the course of oral arguments, an Advocate on behalf of the Complainant argued that all the Opponents were in collusion with one another as can be seen from the pre-ponement of the hearing fixed before the Opponent No. 3 from 31<sup>st</sup> October to 30<sup>th</sup> October and asking the Advocate for the Complainant to leave the chamber of the Opponent No. 3 on 30<sup>th</sup> October because what is fixed on 30/10/2006 is only a meeting between the Opponents and not a hearing. He has submitted a written notice preponing the hearing of the case before the Opponent 3. He stated that though he remained present on the next date and the first appeal was partly allowed, the very fact of pre-ponement and subsequent cancellation of hearing on 30<sup>th</sup> October is malafide. There is no Vakaltnama of the Appellant in favour of any advocate. The learned Adv. Bhagat appeared for both the Opponent No. 2 and 3 and has rejected the allegations and subsequently on directions from the Commission submitted an affidavit by the Opponent No. 3 to the effect that there was no hearing on 30<sup>th</sup> October and hence, nothing was recorded in the roznama for 30<sup>th</sup> October, 2006. However, the pre-ponement itself is not denied and stated that the hearing could not take place on the pre-poned date of 30<sup>th</sup> October because of some other official work. It is interesting to note that the need for pre-ponement itself was not explained, though why no hearing took place on the pre-poned date was explained. Further, even if no hearing took place on 30<sup>th</sup> October, the facts should have been recorded on roznama as it was officially pre-poned. However, we accept the affidavit filed by

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the Opponent No. 3 and consider this as only procedural lapse on the part of the Opponent No. 3 and hope that such lapses are not repeated in future.

5. We will now take up the complaint on merits. There is no doubt, that the Opponent No. 1, initially avoided to furnish the information. In his written statement the Secretary of Society has submitted that they were under the mistaken impression that they were not required to give the information and that it is to be given only by the Opponent No. 2. The mentioning of State Information Commissioner in their reply to the Complainant dated 14/06/2006 is a further mistake admitted by the Opponent No. 1. As soon as they were directed by the Opponent No. 2 by his letter dated 28/6/2006 to issue the documents and collect the necessary fees they have given the information whatever was available though the records are pertaining to the period dating back to 40 years ago. We accept the explanation from the Opponent No. 1 as bonafide and also because the information is old. We also do not know whether the Society has any paid employees and Mr. S. S. Bakshi who signed as a Secretary is working in an honorary capacity.

6. We now come to the main grievance of the Complainant, namely, that excessive fees was taken from him and 2 documents, namely, a Sanad No.RB/CNV/1032/77/342 dated 3/2/1978 and a plan attached to the original sale deed dated 1966 are not traceable in the records of the Society and could have been destroyed in an accidental fire in the Society 's office in the year 1985. The fees was returned by the opponent 1 and it is the complainant who did not accept it for whatever reason. He cannot now make a grievance of it. The first document is the sanad given by the Collectors office. The second document is about a copy of plan approved in 1966 of the lay out and approved plan of the plots of the Society which is also said to be not traceable. Both these are important documents and the society has to have records of them, even if nobody asks for them. The first Appellate Authority has held that these documents need not be given by the Opponent No. 1 because they relate to an occurrence or event occurred before 20 years.

7. We have already gone into meaning and the scope of sub-section (3) of Section 8 mentioning the 20 year Rule in our Appeal No. 92/2006. Briefly stated,

the sub-section (3) of Section 8 lifts the veil of secrecy laid down under Section 8(1) thereof. Section 8(1) lists a number of circumstances, under which the Public Information Officer can refuse the information. Under sub-section (3) this refusal is qualified by the 20 years rule saying that even if the information is exempted under sub-section (1), it is to be given after a lapse of 20 years of the occurrence of the event on the date of request. This is exactly the opposite of what is stated by the Opponent No. 3 in his order. The law is that even the exempted information has to be given after 20 years and not that all information which is older than 20 years need not be given. Hence, the order of the Opponent No. 3 suffers from this legal infirmity and has to be set aside and is accordingly set aside partially. So, Opponent no. 1 is directed to make further efforts and trace out missing documents and furnish the same to the Opponent No. 1 within the 15 days from this order after collecting the necessary fees. If necessary, he may approach the various authorities who might have kept a copy of the same in their records.

8. The next prayer of the Complainant is to impose penalty on Opponent No. 2 and 3. We are not inclined to grant the request. However, for the unnecessary harassment caused to the Complainant, we will like to order the payment of a nominal compensation of Rs.1000/- by the Opponent No. 1 within 15 days. As to the refund of fees of Rs.60/- to the Complainant, we have found that though only excess fees are supposed to be refunded as per orders of the first Appellate Authority, the Opponent No. 1 tried to refund the entire fees of Rs.60/- and it is the Opponent who has not accepted the money and hence, we find that no interference is called for from the Commission on this part. Hence, the complaint is partly allowed. Parties to be informed by post.

(A. Venkataratnam)  
State Chief Information Commissioner

(G. G. Kambli)  
State Information Commissioner