

GOA INFORMATION COMMISSION

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

Complaint No. 47/2007-08/KTCL

Shri. Mahesh P. Kamat,
Shivnery Co-op. Housing Society,
Comba, Margao - Goa.

..... Complainant.

V/s.

The Public Information Officer,
Mr. Shrikant V. Naik,
Kadamba Transport Corporation Ltd.,
Porvorim – Goa.

..... Opponent.

CORAM :

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

(Per A. Venkataratnam)

Dated: 05/03/2008.

Complainant in person.

Adv. Shri. Amey Kakodkar for the Opponent present.

ORDER

The Complainant made a request for certain documents to the Public Information Officer on 23rd July, 2007 under the Right to Information Act, 2005 (RTI Act for short). He made another request dated 25/7/2007 for inspection of certain documents and records of the Kadamba Transport Corporation Ltd. (KTCL). On 22nd September, 2007, the Public Information Officer has given the reply. Meanwhile, the Complainant has filed a Writ Petition No. 492/2007 in the Hon'ble High Court of Bombay, Panaji Bench against the KTCL for having compulsorily retired him from service. During the course of the hearing of the Writ Petition, an affidavit was filed by the Managing Director, KTCL on 30th October, 2007 attaching to it the copy of two notes dated 6/6/2007 initiated by the Personnel Manager and also by the Managing Director himself and which was submitted to the Board of Directors of KTCL. The Board of Directors, in turn, relied on these notes to arrive at a decision to compulsorily retire the Complainant. These documents were not supplied earlier to the Complainant, inspite of having asked for them.

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2. Regarding the request for inspection, the Public Information Officer has informed the Complainant on 20th October, 2007 that as informed to him by the Personnel Manager, the inspection will be allowed only after obtaining the opinion of the State Information Commission. The Complainant now submits that a penalty should be imposed on the Opponent because of supply of incomplete information to his earlier request and also for informing him wrongly that Compulsory Retirement from Service (CRS) proposal was not submitted by the Personnel Manager to the 154th Board meeting as informed to him.

3. Notices were issued. The Complainant argued for himself and Adv. Amey Kakodkar argued for the Opponent. A written statement was also filed by the Opponent. The defence taken by the Opponent for not giving the note of the Personnel Manager is that it was not requested by the Complainant and regarding the inspection of the documents, that all the documents are already in possession of the Complainant except his own ACR's about which a reference was made to the State Information Commission. It was further submitted that in any case "the Opponent has not knowingly given incorrect, incomplete or misleading information". Full information as received from the departments (KTCL) has been furnished to the Complainant.

4. It is necessary to go into the request of the Complainant regarding the documents to appreciate his complaint. By his request dated 23/7/2007, the Complainant has asked among other things at 1(a) CRS proposal to 154th Board meeting dated 11/6/2007; 1(c) Departmental nttings from Legal, Personnel and OSD Department of KTCL relating to said CRS proposal.

5. The reply was furnished by the Public Information Officer on 21/08/2007 enclosing copies of 9 documents. The unsigned notings by the Personnel Manager and the Managing Director were not enclosed. On the other hand, as mentioned earlier, it was specifically mentioned in the affidavit of the Managing Director, KTCL that the note dated 6/6/2007 was furnished by the Personnel Department of the KTCL and he added a further note of his own and submitted to the Board of Directors (BOD) which decided to compulsorily retire the Complainant. This being the case, definitely, a note was initiated, (though not signed) by the Personnel Manager and was relied by the Board of Directors and is, therefore, a record of the KTCL and should have been given initially by the Public Information Officer at the time

of the original request dated 27/7/2007 by the Complainant. The Complainant, specifically, requested the Public Information Officer to give him the departmental notings of Legal, Personnel and OSD Department of the KTCL. It cannot also be denied that note from the Personnel Department is about the Compulsorily Retirement proposal regarding the Complainant. Therefore, we reject the contention of the learned Advocate for the Opponent that the notes were not given initially because they were not asked for. This is a non-disclosure of the information by the Public Information Officer. We are also not impressed by the defence that other officials have not cooperated with him and not given him the required documents. If that is so, he should have brought forth the facts before the Commission and prayed that the officer to whom the request was passed on and who did not cooperate with him, should be treated as a deemed Public Information Officer under the RTI Act for facing the consequences of the non-disclosure of the information. This was also not done. However, we agree that there is no malafides on the part of the Public Information Officer and leave the matter at this stage by warning him to be more careful in future.

6. The next request is about not allowing inspection of the documents requested by him. The inspection of the documents cannot be denied on the ground that the opinion of this Commission is sought. We have made it clear in a number of cases earlier that the Public Information Officer and first Appellate Authority have to discharge their functions under the RTI Act independently and quasi-judicially. They should not take the advice/orders either from their superiors or from this Commission. On this ground, we reject the statement of the Opponent justifying his inaction. The argument that the inspection was not allowed as the documents are already in his possession is also rejected. The documents in the Complainant's possession are admittedly are not original records. They are, at best the attested copies of the original records of the public authority, namely, the KTCL. Even after giving the documents, if an inspection is requested by the citizen of the same documents, the public authority, more particularly, the Public Information Officer cannot reject the request on this ground alone. All that they can do is to fix up a date and time and inform in advance the venue where he can inspect the documents and collect the fees depending on the time for the inspection. After the inspection is over, it is in the interest of the Public Information Officer to draw up a record of proceedings of the inspection,

namely, the time, date and venue of the inspection, officer before whom the inspection is conducted, the time of commencement and completion of the inspection, whether the citizen has taken any notes from the records or photographs or videograph the records etc. This will avoid any controversy in future whether or not the inspection of the records was allowed by the Public Information Officer. This is for future guidance. In the present case, the Public Information Officer is directed to allow the inspection of whatever documents he has requested for. This includes the ACRs of the Complainant himself. Infact, this Commission already passed a speaking order in case of M. K. Desai V/s. Supdt. of Police (HQ), Panaji in Appeal No. 80/2007 by order dated 18/01/2008, allowing the issuance of the copies of his own ACRs to a Government servant. We are not inclined to grant the prayer of the Complainant to impose the penalty on the Opponent.

6. With these observations, the complaint is disposed off and is partly allowed.

Announced in the open court on this 5th day of March, 2008.

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

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