

# **GOA STATE INFORMATION COMMISSION**

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

Complaint No. 50/2006/PWD

Nelson S. Fernandes  
Voilem Bhatt, Mercedes,  
Tiswadi - Goa - 403 005.

..... Complainant.

V/s.

Public Information Officer,  
The Dy. Director (Administration),  
Office of the Principal Chief Engineer,  
Public Works Department,  
Altinho, Panaji - Goa.

..... Opponent.

## **CORAM:**

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

(Per A. Venkataratnam)

Dated: 21/03/2007.

Complainant in person.

Opponent also in person present.

## **ORDER**

This disposes off a complaint dated 25/01/2007 filed by the Complainant complaining the harassment caused by the State Public Information Officer of the PWD (Hqs.) at Panaji. The facts, in brief, as brought out by the complaint are that when the Complainant approached the office of the Dy. Director (Admn.), in the office of the Principal Chief Engineer, PWD at Panaji to file an application for information under the Right to Information Act, 2005, (RTI Act for short) neither the application was accepted by the office staff nor a challan was given to him to pay the application fees. The complaint is that in the absence of the State Public Information Officer, the staff would neither accept the application fees nor issue the challan for payment of fees in the bank by the Complainant himself nor accept the application without the fees. After waiting for some time, the Complainant finally approached the Public Information Officer who entered the application for information in a register maintained in her office but returned the application with a remark "prescribed fees are not enclosed". Not only the fees was not accepted in cash nor the challan was given to the Complainant, the Public Information Officer has personally directed the Complainant to go to the

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bank and ask the Bank itself for challan and make payment. Finally, the Complainant has purchased a Demand Draft and submitted his application. He has also mentioned about his previous application, which was also rejected for non-payment of fees though the fees was offered by him then and not accepted by her office. Finally, the Complainant requested the Commission to take note of this and issue directives to the concerned.

2. A notice was issued to the Superintending Surveyor of Works of PWD as Public Information Officer. The notice was returned by him as he is no longer Public Information Officer. Another notice was issued on 19/02/2007 by the Under Secretary of this Commission to the correct State Public Information Officer. When the matter has come up for hearing before the Commission on 6/3/2007, the Opponent Public Information Officer, Dy. Director (Admn.) remained present in person and filed the reply. Some time after this complaint was filed before this Commission, the Complainant has also approached the first Appellate Authority who has passed his own order dated 5/3/2007 directing the Public Information Officer to give the information. The order states "the information asked should be given to the Appellant if he collects personally". He has also made a comment in his Appellate order dated 5/3/2007 that as the Appellant was required to appear in person in response to the notice given by him, the appeal was "due for dismissal". It appears he has done a favour to the Appellant in directing the Public Information Officer to give the information if the Appellant approaches the Public Information Officer personally. As the information was not completely given to him inspite of the Appellate Authority's order, the Complainant during the hearing before this Commission on 13/3/2007 filed another statement saying that the complete information has not been given to him inspite of the directions, by the Public Information Officer.

3. The request of the Complainant for the information contains 4 questions. The Public Information Officer has given the information to question No. 2 to 4 and did not furnish the information to the question No. 1. In her written reply, the Public Information Officer denied that the Complainant had approached her. However, she admitted that the father of the Complainant approached her and asked her verbally to know the mode of payment of processing fees. According to her, Shri Vincent Fernandes left the office and later on submitted the application alongwith Demand Draft of Rs.10/-. On the point of not giving the information completely she maintained that information could not be given to him as the Complainant did not come in person as directed by the first Appellate Authority.

4. We will now first take up the complaint regarding the non-acceptance of the application for information alongwith cash deposit of Rs.10/-. We have examined this matter at great length in a number of cases and explained the position of law as contained in Sections 6 and 7 of the RTI Act. Even in the latest case of PWD itself, Sushant S. Naik Vs. PIO of PWD and another, (Appeal No. 76/2006/PWD), we have stated with reasons that (i) the request for application should be addressed to the Public Information Officer but could be given either to the Public Information Officer or his office or to the Asst. Public Information Officer or in his office. It is not necessary for the citizens to give the application to the Public Information Officer/ Asst. Public Information Officer personally; (ii) we have also held that it is for the applicant to decide which mode of payment of application fee he wants to tender at the time of applying for the information namely whether by cash or by Demand Draft or by banker's cheque. It is not open to the Public Information Officer to compel the payment in a particular manner which he or she wants; (iii) that this Commission has suggested to the Government of Goa to amend the fee rules as far back as 8 months ago to include the affixing of court fee stamp of Rs.10/- as one of the modes of payment of application fees so that such complaints of non-receipt of the application fee could be avoided. In the present case, the Public Information Officer has not denied the allegation that application was not accepted by her office, challan was not given to him inspite of his asking, that the Public Information Officer advised the Complainant to go to the bank and ask the challan with the bank, that the application was entered in the register maintained for that purpose in the office of the Public Information Officer but was returned with the remark "prescribed fees are not enclosed". She has also not denied that she refused to give in writing to the Complainant that she told the Complainant to take the challan from bank only for making payment of the application fee. She has not denied the allegation of the Complainant in an earlier case when her office has not accepted the application fees and rejected the application for non-payment of fees. On the other hand, she had made a statement that Shri Vincent Fernandes was asked verbally to know the mode of payment of processing fees. The money to be paid by any citizen under the RTI Act (Rs.10/-) is the application fee. There is also no provision in the Act and Rules to enter into a dialogue with any citizen regarding the mode of payment of the application fees. This itself is uncalled for and is meant to harass the Complainant. No person would buy a Demand Draft for Rs.10/- after paying a Bank commission of Rs.30/-, as is done by the Complainant in the present case, when there is a clear cut provision in the Rules

to pay the fees by cash. We, therefore, believe that the Public Information Officer has refused to accept the fees in cash tendered by the Complainant and also refused to issue the challan for payment in the bank.

5. The order of the first Appellate Authority is not challenged before us. However, a copy of it is produced by the Opponent which is also defective in that the Appellate Authority made incorrect observations regarding the compulsory appearance in person by the Appellant as a ground for dismissal of the appeal and also regarding the personal appearance of the Appellant before the Public Information Officer to get the information. The PWD seems to be specializing in various methods to harass the citizens in order to refuse the information requested. As mentioned earlier in some cases, the information was denied, as also in this case, by not accepting the application fees in cash; not meeting the Public Information Officer to give the application personally as a reason for refusal and finally now the learned first Appellate Authority has introduced another excuse by inventing a condition that the citizens should approach personally the Public Information Officer to get the information. We do not know from where the first Appellate Authority has obtained this wisdom, which is not mentioned in the RTI Act or Rules.

6. The State Government has framed the Goa State Information Commission (Appeal Procedure) Rules, 2006 in exercise of their powers under Section 27. No doubt, these Rules are applicable only to the appeals before this Commission. Under the Rules, the personal presence of Appellant or Complainant is not necessary and the appeal has to be disposed off based on records under Rule 7(3). Further, the Appellant can take assistance of any other to present his case before Appellate Authority under Rule 7(4). This Rules no doubt applies only to the proceedings before this Commission. However, the first appeal under the Section 19(1) also are in the nature of quasi-judicial function before the first Appellate Authority and the Appeal Procedure Rules of the Commission should be followed as far as possible by the first Appellate Authority as well. The dismissal of the first appeal for the default of the appearance of the Appellant, is therefore, not correct. Thus, the observation to that effect in the first Appellate order in this case also deserve to be set aside. We hereby set aside these observations even though the first appeal is not challenged before us. Even though first appeal is not challenged before us, signed copy is placed before us by the Opponent (PIO) with the remarks of the first Appellate Authority that the first appeal is liable to be dismissed for default of appearance of the Appellant.

Similarly, we also set aside the directions of the first Appellate Authority that the information should be given by the Public Information Officer only when the Complainant approaches the Public Information Officer. We do not find any such provision in the Act or Rules. We, therefore, allow the complaint and direct the Public Information Officer to give the information on the first question to the Complainant suo moto after collecting fees from the Complainant. A letter informing that the information is ready and informing him to deposit the amount of fees required to be paid by the Complainant should be issued in the next 10 days and compliance reported to this Commission. The Commission will not accept the plea that the information is not given as the Complainant has not approached the Public Information Officer in person.

7. There is no prayer by the Complainant to start penalty proceedings against the Public Information Officer. However, in the circumstances of this case, we would like to hear the Public Information Officer as to why the penalty of Rs.250/- per day should not be levied on her for wrongly refusing the information and for wrongly refusing to accept cash tendered by the Complainant. Posted to 30/03/2007 for further hearing.

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

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