

**GOA INFORMATION COMMISSION**

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

**Complaint No.68/2006**

Allvin B. Facho  
R/o Doris palace,  
H. No. 1739, Alto Porvorim  
Bardez – Goa.

..... Complainant

V/s

1. Public Information Officer  
Shri V. G. Salkar, Office of the State  
Registrar & Head of Notary Service,  
Dayanand Bandodkar Marg,  
Panaji – Goa.

2. Shri R. L. Pednekar,  
Civil Registrar –Cum Sub Registrar,  
Bicholim.

..... Opponents.

**CORAM:**

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

(Per G. G. Kampli)

Dated: 13/06/2007.

Shri Sanford Facho learned Adv. for the Complainant.

Both the Respondents in person.

**J U D G M E N T**

This is a Complaint filed under section 20 of the Right to Information Act, 2005 (for short the Act) wherein the Complainant, interalia, has prayed, (i) that the penalty be imposed on the Opponents, (ii) that the Complainant be awarded compensation and disciplinary proceeding be recommended against the Opponents under the service rules applicable to the Opponents.

2. The facts leading to this Complaint are that the Complainant vide his application dated 31/7/2006 sought certified copies of the sales statistics

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Form XIII of the village Salvador do Mundo for the period from January 2004 to July 2006 from the Opponent No. 2 and copy of the said application was endorsed to the Opponent No. 1. The Complainant alleges that at the request of the Opponent No. 1, the Complainant submitted another application dated 10/8/2006 to the Opponent No. 1 who was the PIO under the Act. The Complainant stated that as per the instruction of the Opponent No. 1 Complainant paid the application fee of Rs. 10/- and thereafter the Opponent No. 1 forwarded the application of the Complainant to the Opponent No. 2 with a direction that the information sought by the complainant be provided to the Complainant. However, while giving the said direction, the Opponent No. 1 also directed the Opponent No. 2 to collect the fees for the information as per the Indian Registration Act 1908 (for short Registration Act).

3. The Complainant states that inspite of the direction from the Opponent No. 1, the Opponent No. 2 failed to furnish the information to the Complainant as a result of which great and serious inconvenience and hardship were caused to the Complainant.

4. The Complainant, further stated that the complainant made a fresh application before the Opponent No. 2 on 22/9/2006 for certified copies of Form XIII for the period of February 2006 stating that the information pertaining to the period of January 2004 to January 2006 and from March 2006 to June 2006 will be collected as soon as said information is made ready by the Opponent No. 2. The Complainant states that in pursuance of the said application dated 22/9/2006, the Opponent No. 2 made available the information comprising 2 pages by charging Rs. 45/-.

5. The Complainant states that since the Opponents failed to furnish the information to the Complainant, the Complainant preferred an appeal before the first Appellate Authority on 15/12/2006 and the Appellate Authority by his judgment and order dated 15/1/2007 partly allowed the appeal with a direction that the Respondents shall furnish the information to the Complainant by charging the fees as prescribed under the Goa Right to

Information (Regulation of fees and costs) Rules 2006 (hereinafter referred to as the Rules, 2006). It was further ordered that the Respondents shall either refund or adjust the excess fees collected from the Complainant while issuing the information in respect of Form XIII of February 2006.

6. Both the Opponents filed their replies. The Complainant and the Opponent No. 1 also filed their written submissions.

7. In the written reply filed by the Opponent No. 2, the Opponent No. 2 raised the preliminary objection stating that the Complainant asked for certified copies and therefore the Complainant was required to pay the fees under the Registration Act and that the certified copies cannot be issued under the Act. The Opponent No. 2 also submitted that the information sought by the Complainant was kept ready but did not collect it and made an endorsement on the application dated 22/9/2006 that the information sought by him vide application dated 31/7/2006 and 10/8/2006 would be collected separately. The Opponent No. 1 also reiterated the stand taken by the Opponent No. 2 and stated that the Complainant did not collect the information from the office of the Opponent No. 2 on payment of charges though the same was kept ready. The Opponent No. 1 denied of having informed the Complainant to make a separate application but told the Complainant that the Opponent No. 1 is the PIO when the Complainant came to inquire about the same.

8. In his written submissions, the learned Adv. for the Complainant submitted that the Opponent No. 1 ought to have taken the cognizance of the application dated 31/7/2006 since copy thereof was sent to the Opponent No. 1 and by directing the Complainant to make a fresh application, the Complainant is put to inconvenience. It is also submitted that the Opponents failed to provide the information to the Complainant within the specified period as laid down in section 7 (2) of the Act. Further it is alleged that the Opponents have not complied with the provisions of sub-section (3) of section 7 of the Act because neither the Opponent No. 1 nor the Opponent No. 2 informed the Complainant about the further fees payable by the

Complainant towards the supply of the information and, therefore, the Opponents are liable for penal action under section 20 of the Act. The Complainant states that he has even sent a reminder dated 30/10/2006 to the Opponent No. 2. The Complainant also submitted that though the part of information was provided pertaining to the period of February 2006, the Complainant was charged fees of Rs. 45/- under the Registration Act. He also submitted that the balance information was collected by him from the Opponent No. 1 on 6/3/2007. According to the Complainant there has been a delay of 208 days as the delay has to be computed from 31/7/2006 to 6/3/2007.

9. In the written submissions filed by the Opponent No. 2, the Opponent No. 2 submitted that the Opponent No. 1 has not violated any of the provisions of the Act and the Opponents acted within the provision of the Act but it is the Complainant who did not collect the information inspite of the intimation.

10. We have gone through the complaint and the replies filed by both the Opponents as well as considered the written submissions made by learned Adv. for the Complainant as well as the Opponent No. 1. Before we discuss the matter, on merit, we could like to dispose off the preliminary objection raised by the Opponent No. 2 stating that the certified copies could be issued only under the Registration Act and not under the Act. The expression "Right to Information" is defined in clause (j) of section 2 of the Act and in terms of sub-clause (ii) of clause (j) of section 2 of the Act, the certified copies of documents or records fall within the definition of right to information and therefore the citizens are entitled to seek certified copies of the documents/records under the Act. We, therefore, do not find any substance in the preliminary objection raised by the Opponent No. 2 and therefore, overrules the same.

11. Coming now to the merits of the case, admittedly, the Complainant made an application dated 31/7/2006 to the Opponent No. 2 with a copy to the Opponent No. 1. The Opponent No. 1 has denied of having informed the

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Complainant to make a fresh application. The Complainant has also not produced any documentary evidence to show that the Opponent No. 1 has asked the Complainant to make a fresh application. The Complainant has made a fresh application dated 10/8/2006. According to the Opponent No. 1, the Opponent No. 1 vide letter dated 18/10/2006 made an inquiry with the Opponent No. 2 as to whether a duplicate Form XIII are ready to which the Opponent No. 2 submitted a reply on 23/8/2006 to the Opponent No. 1 informing that the duplicate Form XIII are ready. Accordingly, the Opponent No. 1 vide his letter dated 6/9/2006 directed the Opponent No. 2 to issue the Form XIII to the Complainant as per his desire by collecting necessary fees under the Registration Act. The copy of this letter was endorsed to the Complainant with a request to collect the copies of Form XIII from the Office of the Opponent No. 2. Subsequently, the Complainant sought the certified copies of Form XIII for the months of February 2006 from the opponent No. 2 and made an endorsement on the said letter stating that the Form XIII for other months as applied vide application dated 31/7/2006 and 10/8/2006 will be collected separately on payments. This clearly indicates that the Complainant himself had volunteered to collect the remaining information on payment separately.

12. The Complainant thereafter vide application dated 30/10/2006 requested the Opponent No. 2 to furnish the remaining information. The Complainant also made the grievances in the said letter that the Complainant was asked to pay Rs. 45/- for 2 pages which was not in accordance with the fees prescribed under the Act. The Opponent No. 2 vide letter dated 13/12/2006 asked the Complainant to pay the fees as per the Registration Act.

13. Thereafter, the Complainant filed the appeal before the First Appellate Authority on 15/12/2006. The First Appellate Authority has rightly allowed the appeal and directed the Opponents to furnish the information to the Complainant by charging the fees as prescribed under the Rules 2006. Therefore, as far as the payment of the fees are concerned the controversy as to whether the fees are to be charged as per the Registration Act or the Rules

2006 ended. Section 22 of the Act overrides the other laws and therefore the Act has got overriding effect over the provisions of Registration Act. Being so, the 1<sup>st</sup> Appellate Authority has rightly held that the fees are to be charged as per the Rules, 2006 and not under the Registration Act. The 1<sup>st</sup> Appellate Authority passed an order on 15/1/2007. According to both the Opponents, the information sought by the Complainant was ready and therefore we fail to understand as to why the Opponents took considerable time to provide the balance information to the Complainant on 6/3/2007. Both the Opponents have erred in holding that the fees are to be paid in accordance with the Registration Act and not as per the Rules of 2006.

14. It will be seen from the above that the Opponent No. 1 has requested the complainant to collect the information on payment of the fees as per the Registration Act vide letter dated 13/12/2006 the Complainant did not collect the information. Even on earlier occasion the Complainant made an endorsement on its letter dated 29/6/2006 that the information sought by him vide his earlier applications dated 31/7/2006 and 10/8/2006 would be collected separately. Therefore, the Complainant could have collected the information on payment of fees as per the Registration Act without prejudice to his right to appeal for charging the fees not as per the Rules 2006.

15. Be that as it may, the 1<sup>st</sup> Appellate Authority passed an order on 15/1/2007 and therefore the issue regarding the payment of fees was settled. The Opponent therefore ought to have provided the information to the Complainant after the order was passed by the 1<sup>st</sup> Appellate Authority but the Opponent No. 2 provided the information to the Complainant on 6/3/2007 the delay between the receipt of the order of the 1<sup>st</sup> Appellate Authority till 6/3/2007 has not been explained by the Opponents.

16. In the instant case the Opponent No. 1 has not followed the proper procedure. The Opponent No. 1 ought to have collected the information from the opponent No. 2 and provided the same to the Complainant within specified period rather than giving direction to the Opponent No. 2 to furnish the information by collecting the fees as per the Registration Act. Further,

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the Complainant was also fully knowing that the Opponent No. 2 is not the PIO, yet started writing the letters to the Opponent No. 2. The Opponent No. 2 also started giving the reply to the Complainant instead of sending the same to the Opponent No. 1. Therefore, the procedure followed by the Opponent No. 1 and the Complainant are not in accordance with the provisions of section 7 of the Act.

17. The first Appellate Authority has passed an order on 15/1/2007. No records are available before us as to the date as to when the order of the first Appellate Authority was received by the Opponent No. 1. The order of the first Appellate Authority has not been challenged by any of the parties and therefore, the said order becomes final. Being so, it was incumbent on the part of the Opponents to comply with the order of the first Appellate Authority. In the present complaint, the Opponent No. 1 has raised the same issue regarding the payment of fees by the Complainant which was already decided by the first Appellate Authority. The first Appellate Authority has discussed this issue at length and has held that the fees are to be payable as per the Rules, 2006 and not as per the Registration Act. Therefore, the Opponent No. 1 was estopped in raising same issue which was decided by the first Appellate Authority. Being so, the Opponents ought to have provided the information to the Complainant on receipt of the order from the first Appellate Authority but did not do so till 6/3/2006. This has compelled the Complainant to approach this Commission by way of the present complaint which could have been avoided if the order of the first Appellate Authority was complied by the Opponents. On the contrary, the Opponent No. 2 has made unwarranted and uncalled for statement in para 9 of his reply which reads as follows: -

“The Respondent No. 2 states that the judgment dated 15/01/2007 has no legal sanction as the principles of natural justice were not adhered to by the 1<sup>st</sup> Appellate Authority, this Respondent No. 2 was made a party to the proceeding was neither served with a notice of appearance nor was given an opportunity of being heard.

The said judgement is not binding upon this Respondent No. 2 as the judgement was passed behind his back and therefore, is a nullity in the eyes of Law”.

18. It will be seen from the above that the Opponents have compelled the Complainant to file the present complaint thereby putting the Complainant into inconveniences, hardship and mental torture besides the delay. The Opponent No. 1 has not acted diligently after passing of the order by the first Appellate Authority and no justification is given for non-compliance of the order of the first Appellate Authority and therefore, we are satisfied that the Complainant is entitled to the compensation and accordingly, the Commission direct the Opponent No. 1 to pay the compensation of Rs.2000/- to the Complainant within a period of two months from the date of the receipt of the order.

19. As regards the other prayers of the Complainant for imposing the penalties on the Opponents, there is no provision in the Act to impose the penalty or recommend disciplinary proceedings against the officer other than Public Information Officer unless the said officer is treated as Public Information Officer under sub-section (5) of Section 5 of the Act. In the instant case, the Opponent No. 2 is not the Public Information Officer and hence, we cannot grant the prayer of the Complainant. From the facts as brought out on record, we do not find any malafides on the part of the Opponent No. 1 in as much as the information sought by the Complainant was kept ready but the Complainant himself has not collected the same. Hence, we are not inclined to accede to the prayer of the Complainant to impose penalty on the Opponent No. 1.

20. In view of what has been discussed above, we pass the following order: -

**O R D E R**

1. The Complaint is partly allowed. We direct the Opponent No. 1 to pay the compensation of Rs. 2000/- to the Complainant in terms of section 19 (8) (b) of the Act.



2. The prayer of the Complainant to impose the penalty against the Opponents is rejected.
3. The prayer of the Complainant to recommend disciplinary proceeding against both the Opponents is rejected.

Parties be informed.

(G. G. Kambli)  
State Information Commissioner

(A. Venkataratnam)  
State Chief Information Commissioner