

GOA INFORMATION COMMISSION

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

Complaint No. 80/2007/Police

Lt. Col. (Retd) Paul B. Fernandes,
"Aerie", 468 Aquem Baixo,
Margao - Goa.

..... Complainant.

V/s.

The Public Information Officer,
The Superintendent of Police,
Town Police Station, South,
Margao – Goa.

..... Opponent.

CORAM :

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

(Per A. Venkataratnam)

Dated: 25/06/2008.

Complainant present.

Adv. Harsha Naik for the Opponent.

ORDER

This disposes off the complaint dated 8th March, 2008 by the Complainant alleging that the revised replies given by the Opponent, to his original request for information dated 14th April, 2007 consequent to our order dated 10/01/2008 in an earlier complaint No. 27/2007, are false and misleading and requested the Commission to pass orders as deemed fit.

2. Notices were issued to both the Complainant and the Opponent. The Opponent filed his reply and the matter was argued thereafter by Complainant as well as by the learned Adv. Harsha Naik on behalf of the Opponent.

3. Initially, the Public Information Officer has replied in vague terms to all the 10 requests specifically made by the Complainant at para 7 of his original application dated 14/04/2007. When the matter was taken up by the Complainant with the first Appellate Authority, the first Appellate Authority directed the Public Information Officer to "furnish all the information sought, if

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available, and if the information is not available then the Public Information Officer should inform the same to the Appellant with reasons". Consequently, the Public Information Officer replied once again to the Complainant pointwise. However, as the Complainant was still not satisfied with the reply, he took up the matter with this Commission as non-implementation of the orders of the first Appellate Authority by way of filing a complaint. As mentioned earlier, the earlier complaint was disposed off by our order dated 10/01/2008 with a direction to give the detailed and correct replies to the Complainant. The Public Information Officer furnished another reply pointwise on 9/2/2008 after our order. Now the present complaint states that the reply given on 9/02/2008 is false and misleading. With this background, we will have to examine the request point by point to see whether the Public Information Officer has given any false or misleading information.

4. The first query is whether an FIR was registered against one Mr. Silvano Rebello based on a complaint dated 24/11/2003 by an association of landowners called Gaon Association of Landowners & Agriculturists (GALA). Initially, the Public Information Officer did not give any reply. Now the latest reply says that "the Director of Prosecution informed the Police that the complaint was cognizable but it was vague and further information is needed". Consequently, the Police started an inquiry even before registering an FIR. Now belatedly, they have registered an FIR on 29/04/2008. This has been enclosed to the reply by the Public Information Officer dated 8/5/2008 filed before us during the hearing of the present second complaint. It is, therefore, clear that at the time of making of his original request by the Complainant, no FIR was registered. The Complainant now went into an elaborate discussion about advice tendered by the Director of Prosecution, the procedure followed to investigate before registering an FIR and such other details with which we are not concerned. We are also not the authority to decide whether the procedure adopted by the Police in investigating the matter even before an FIR is registered is correct or not, though prime facie it appears to us that registration of offence should precede the investigation. We are not in position to give any finding on this matter for want of jurisdiction. However, as the information is received by the Complainant, we find that there is nothing misleading about the information.

5. The second question is about providing him with certified Xerox extract from Police Act or Police Manual wherein such provision (about investigation

even before registering the FIR) exists. The Police has informed that there is no Police Manual with them and that there are no provisions in the Police Act as far as investigation is concerned. However, the Public Information Officer informed that the procedure is laid down in Chapter XII of Cr.P.C. 1973. The Complainant is very much anguished that even 46 years after liberation of Goa, the Goa Police did not find it necessary to have its own Police Manual. We are also surprised and anguished. However, once again, it is not within the jurisdiction of the Information Commission to comment as to why there is no Goa Police Manual so far or why the manual from some other State was not adopted. The Complainant, thereafter, went on a discussion about the provision of Cr. P. C. to say that the Police has not followed the provisions of the Cr. P. C. The deficiencies in following the procedure while investigation, if any, weighing the evidence gathered during such investigation will be the subject matter for an inquiry and trial at the time of hearing the case as and when it is chargesheeted in a criminal court of law. Here again, the Commission cannot judge and adjudicate that the Police investigation is correct or not. The charge, therefore, of giving false information by the Public Information Officer to this point also is rejected.

6. The third request is about whether the usual procedure while investigating the complaints by the Police is registering the FIR first, then interrogating the accused and whether such procedure has been followed in this case. This point is similar to the first point and the Public Information Officer has replied already that the Police found it necessary to record the statement of certain persons and collect certain documents even before registering the complaint as an FIR. Now the Complainant finds that this is arbitrary. He has also mentioned certain factual information which is not of any relevance to us at the moment to find whether the information given by the Police is false or otherwise. As we have already mentioned, the role of this Commission is limited to see that the information is given by the public authorities to the citizens. The correctness of actions taken by the public authorities cannot be questioned by this Commission nor the procedure followed by the Police as stated by them amounts to a false statement and misleading information. Hence, the contention of the Complainant on this point also is rejected.

7. The fourth request is whether the Police can intimate the reasons for not adhering to the usual procedure in this case. The Public Information Officer

flatly denied the allegations and stated clearly that Investigation Officer has followed the usual procedure. The request for this information at para 7(d) is not a request for information but is an allegation. Further, it has already been held by the Hon'ble High Court of Bombay, Panaji Bench in their order dated 3/4/2008 in Writ Petition No. 419/2007 in the case of Celsa Pinto Vs. Goa State Information Commission and another relied by the learned Advocate for the Opponent that the Information Commission cannot go into the reasons why the public authority took action in a particular manner as it amounts to justification of a particular thing. Therefore, the Public Information Officer, is not duty bound to intimate the reasons to the Complainant on this point.

8. The fifth request, at para 7(e), is about providing Xerox copies of the procedure for carrying out investigation in criminal cases. The Public Information Officer has informed that this procedure is laid down in Chapter XII of Cr. P. C. This is a printed publication and it is available in market. However, if still the Complainant wants the certified copy of Chapter XII of Cr. P. C., he may specifically request for the same and Public Information Officer will have to photocopy the provisions and give it to him after collecting the fees. Right now, the information given is sufficient in our view and answers the questions posed by the Complainant.

9. The sixth question, is whether Shri. Silvano Rebello was arrested and was in Police custody when he was interrogated. The Public Information Officer has replied that he is not arrested. There is, therefore, no misleading by the Public Information Officer. The Public Information Officer has also submitted in his written statement that the then Investigating Officer has recorded the statement of Silvano Rebello. Whether it amounts to the interrogation or not will depend on the interpretation given by the Complainant. However, the reply given by the Police cannot be said to be misleading on this point.

10. The next question No. 6 is about the name, rank and designation of the police official who interrogated Shri. Silvano Rebello. The Public Information Officer has given the name of the Investigating Officer. The Complainant now finds fault with this reply saying that the Public Information Officer has not answered whether he has confronted Silvano Rebello with the evidence provided by his complaint and the signature of (Silvano Rebello) on certain documents. In the reply furnished by the Public Information Officer earlier as well as now it was clearly mentioned that the documents were shown to Shri. Rebello which denied

all the allegations. Further, when the Police summoned Complainant himself to question Mr. Rebello in the presence of Complainant, Complainant did not oblige. Therefore, the presumption of misleading the Complainant does not arise. The next question at para 7(h) is regarding the details about the investigation conducted in the case. The Public Information Officer answered that the presence of the Petitioner was sought and hence "confrontation" with Silvano Rebeloo could not take place. Therefore, the complaint on this point also does not survive. The next point is about the copy of statement of Silvano Rebello. The Public Information Officer offered to give this. Whether it was actually given or not is not known. However, in the present complaint, the Complainant made an elaborate discussion of how this statement is "questionable". We have already mentioned that we have no jurisdiction to go into this matter and it is for the Complainant to try and make out from whatever documents were furnished by the Public Information Officer. The next point at para No. 7(j) is also a type of allegation that the Police is protecting Silvano Rebello. The Public Information Officer has denied this allegation and we do not have the authority to decide which side of the story is correct.

11. We find from the above discussion, that all the points raised by the Complainant in the present complaint are only his own interpretation of the investigation by the Police and is not concerned with either non-supply of information or with supply of incorrect or false information. Accordingly, the complaint lacks merit and is hereby dismissed.

Pronounced in the open court on this 25th day of June, 2008.

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

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