

GOA INFORMATION COMMISSION

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

Complaint No. 83/2007-08/Police

Shri. Jowett D'Souza,
H. No. 139, Ambeaxir, Sernabatim,
Colva, Salcete - Goa.

..... Complainant.

V/s.

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

..... Opponent.

CORAM :

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

(Per G. G. Kambli)

Dated: 25/04/2008.

Complainant present in person.

Adv. K. L. Bhagat for the Opponent.

ORDER

This is a complaint filed by the Complainant against the Opponent under section 18 of the Right to Information Act, 2005 (for short the Act) praying, inter alia, that the Opponent be directed to comply with the order dated 18/02/2008 passed by this Commission in Appeal No. 105/2007-08.

2. The case of the Complainant is that the Opponent has deliberately denied information sought by the Complainant vide application dated 13/9/2007 inspite of the order dated 18/02/2008 passed by the Commission giving direction to the Opponent to provide the information within 15 days from the date of the order.

3. The Opponent has sent his affidavit in reply through the messenger which was delivered to the inward clerk of the Commission instead of filing the same before this Commission at the time of the hearing. The Commission in the past had observed that in respect of the Police Department, the replies, affidavit in replies, authorization letters etc. are being sent by the Police Department and delivered at the entry and therefore, the Commission by its order dated 17/01/2008 had made it clear not to take cognizance of any such authorization, affidavit in reply given to the inward clerk instead of filing on date of hearing.

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In spite of such an order, the Police Department continues to send their replies, authorization and delivered the same to the inward clerk. This itself shows that the Police Department is not interested or keen in implementing the decisions of this Commission. It is pertinent to note that the Commission being a quasi judicial authority cannot accept any replies or applications at the back of the other party and therefore, in the public interest the Police Department was asked to file their affidavits in replies and other applications only at the time of the hearing.

4. Coming now to the present case, the Opponent in his affidavit in reply has stated that the Police Department is desirous of filing the writ petition before the Hon'ble High Court of Bombay challenging the order of this Commission. The Opponent has contended that in case the order of the Commission is complied with and the information is provided to the Complainant, it will set a precedent for the culprits in other crimes which are under investigation in the various other Police Stations to seek information during the course of the investigation. The Opponent has also further contended that the investigating officer has to conduct inquiries, interrogations, attachment panchanamas and incriminating evidence, recovery panchanama under section 27 of the Evidence Act, statement of eye witnesses etc. and in case the information is disclosed during the course of the investigation, the culprits would certainly tempered with the evidence and intimidate the witnesses in order to avoid charge. And, therefore, it would be difficult for the investigating officers to conduct proper investigation in order to chargesheet the real culprit as accused.

5. The Opponent further submitted that the Opponent vide his letter dated 28/01/2008 and letter dated 10/3/2008, brought to the notice of this Commission the decision of the Police Department to file the writ petition. However, copies of these letters have not been annexed to the affidavit in reply as mentioned therein. The Opponent states that since the Police Department has decided to file the writ petition, the information sought by the Complainant has not been furnished and again to furnish the information to the Complainant would depend upon the decision of the Hon'ble High Court in the said petition. The Opponent, therefore, prayed that the implementation of the order of this Commission dated 18/02/2008 be kept in abeyance till the disposal of the writ petition.

6. In this context, it is to be noted that the Police Department nor the Opponent has produced any copy of the writ petition filed before the Hon'ble High Court of Bombay. The Opponent has also failed to show the provisions of

the Act under which the Commission can either withhold the implementation of its order or keep the implementation of the order in abeyance. The Commission cannot accept the mere statement of the Opponent that they would like to file writ petition before Hon'ble High Court. The copy of the decision of the Government for filing the writ petition before Hon'ble High Court of Bombay challenging the order of this Commission is not produced before us leaving aside the stay of the Hon'ble High Court. The Opponent is neither interested in filing the writ petition and obtaining the stay from the Hon'ble High Court of Bombay nor the Opponent is interested in implementing the orders passed by this Commission although considerable time has been lapsed since the passing of this order by this Commission.

7. It is also pertinent to mention here that the Commission in other appeals filed by this very Complainant against the Opponent has ordered to provide the information to the Complainant yet the Opponent has not complied with the orders of this Commission nor even produced copies of the writ petition filed before the Hon'ble High Court of Bombay. The Commission cannot indefinitely wait for the Opponent. If at all the Opponent is interested in challenging the order of the Commission, the Opponent should have taken prompt steps to challenge the order. When the matter came up before this Commission on 4/4/2008 for hearing, the Opponent was directed to file the details of the steps taken by the Opponent either to implement the order of the Commission or to file writ petition before the Hon'ble High Court and the matter was fixed on 14/4/2008. As the Government declared the 14/4/2008 as a public holiday, the matter was taken up on 15/04/2008. On 15/4/2008, Shri. K. L. Bhagat, learned Government Counsel appeared on behalf of the Opponent and submitted that he has no details about the steps taken by the Opponent nor he has received any instructions in this regard. The matter, therefore, was heard and fixed for orders on 25/4/2008. Again, surprisingly, the Opponent sends his letter dated 21/4/2008 stating that this Commission has given directions to file his reply on 21/4/2008. The Commission ignores this letter as the same was not filed within the time limit given by the Commission and secondly because the same is sent at the back of the Complainant and when the matter was posted for orders.

8. We have observed that the bonafide of the Opponent is very much doubtful. The Opponent if at all was interested in filing the writ petition, he should have at least produced a copy of the Government decision to that effect. From the conduct of the Opponent, it can be implied that the Opponent is not interested in disclosing the information to the Appellant on the pretext that the

Police Department has decided to file a writ petition before the Hon'ble High Court of Bombay and on the other hand no copy of the writ petition is yet filed before this Commission leaving aside the stay order from the Hon'ble High Court. The Opponent has stated in the affidavit in reply that the disclosure of the information to the Complainant would set a bad precedent for the culprits. We fail to understand how the Opponent has treated the Complainant as culprit accused. The Opponent should note that the Complainant has filed FIR and he is very much interested in the outcome of his complaint and prosecution of the accused persons involved in the case. On the contrary, the Public Information Officer is considering the Complainant as a culprit which goes to show that the Opponent is not interested in proper investigation of the FIR filed by the Complainant. We are not at all satisfied with explanation given by the Opponent for non-compliance/disobedience of the order of this Commission. The Opponent has not provided the information as directed by the Commission nor has produced either a copy of the writ petition or copy of the stay order granted by the Hon'ble High Court of Bombay. The Opponent even has not produced a copy of the Government decision for filing the writ petition challenging the order of this Commission. Hence, the Opponent has not made out any case to consider the matter even on sympathetic grounds. The manner in which the Opponent has handled the present matter does not appear to be bonafide.

9. In the present case, there has been a delay of 51 days on the expiry of 15 days given to the Opponent to provide the information to the Complainant. We are, therefore, inclined to allow the complaint filed by the Complainant and impose a penalty of Rs.250/- per day delay from 5th March till this date which comes to Rs.12,750/-. Accordingly, a penalty of Rs.12,750/- is hereby imposed on the Opponent under section 18 read with section 20 of the Act. The Joint Director of Accounts, South Goa, Margao is directed to deduct the aforesaid amount of Rs.12,750/- from the salary of the Opponent in 3 monthly installments from the months of June, July and August, 2008. We are not inclined to grant with the other prayers of the Complainant.

Announced in the open court on this 25th day of April, 2008.

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

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

