

GOA INFORMATION COMMISSION

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

**Penalty Case No. 15/2007 in
Complaint No. 51/2007-08 &
Complaint No. 52/2007-08
Complaint No. 89/2007 &
Complaint No. 90/2007**

Shri Ravindra Jana,
C/o. Narayan Divkar,
Mainam Bhatti,
Arpora, Bardez – Goa.

... Complainant

V/s.

The Public Information Officer,
The Secretary,
Village Panchayat of Calangute,
Calangute, Bardez – Goa.

... Opponent.

CORAM:

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

(Per G. G. Kambli)

Dated: 20/08/2008.

J U D G M E N T

This common judgment and order will dispose off the above two Complaints and the penalty case as the parties of all the three cases are same, the subject matter of all the three cases are similar and the points involved for consideration are the same.

2. The facts leading to all these 3 cases are that the Complainant by two separate applications both dated 06/01/2007 sought certain information from the Secretary of the Village Panchayat of Calangute who is the Public Information Officer designated under the Right to Information Act, 2005 (for short the Act). In one application, the Complainant requested the Village Panchayat Secretary Calangute to provide him copies of all construction licenses, development permissions granted to Tito's Bar and Restaurant situated in Sy. No. 243/15 of Calangute Village and House Tax receipts in respect of the said Tito's

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Bar and Restaurant. In second application, the Appellant sought the copies of Construction licenses development permission granted to structure situated in Sy. No. 245/2 at Santa Wado Calangute and House Tax receipts in respect of the allotment of House Tax Number of the said structure. The Village Panchayat Secretary, Shri. Eknath B. Talkar informed the Complainant that the information sought by the Complainant pertains to the private party and the Panchayat has received the objection for disclosure of the information stating that they are receiving threats and for security reasons. The Village Panchayat Secretary rejected the request of the Complainant vide letter dated 05/02/2007 under section 8 (j) of the Act.

3. Feeling aggrieved by the said rejection letter, the Complainant preferred two separate Appeal being Appeal No. 22/2007 and 23/2007 on 21/02/2007. The First Appellate Authority ordered, the Opponent herein to submit the copies of the documents to the Appellant on or before 11/09/2007 and the matter was posted for hearing on 11/09/2007 at 3.00 p.m. On 11/09/2007 the Appellant was absent and the Respondent was present. However, the First Appellate Authority adjourned the matter to 25/09/2007 at 3.00 p.m. On 25/09/2007, the First Appellate Authority passed an order allowing the Appeal filed by the Complainant and directing the Respondent, Public Information Officer to issue information within 15 days from the date of said order. Pursuant to the order passed by the First Appellate Authority, the Respondent Public Information Officer provided copies of certain documents, which according to the Complainant were not in terms of the application dated 06/01/2007 of the Complainant. Therefore, the First Appellate Authority was pleased to direct the Respondent by his order dated 25/09/2007 to furnish the information sought by the Complainant within 15 days.

4. However, inspite of the directions of the first Appellate Authority, the Public Information Officer i.e. Village Panchayat Secretary of the Village Panchayat of Calangute did not provide complete information to the Complainant and therefore the Complainant has filed two separate complaints being Complaint No. 51/07-08 and Complaint No. 52/2007-08 before this Commission. The Commission by its common order dated 15/01/2008 passed in the said two Complaints directed the Public Information Officer, Village Panchayat Calangute to comply with the

orders passed by the First Appellate Authority within one week and file the compliance report to the Commission on 24/01/2008. The Public Information Officer was also directed to show cause as to why the prayers of the Complainant for imposing the penalty and recommending disciplinary action under section 20 of the Act should not be granted. The Public Information Officer was directed to file his reply on 24/01/2008 at 11.00 a.m. Surprisingly, the Village Panchayat Secretary of Calangute Shri. K. D. Pagui wrote the letter dated 23/01/2008 to the Complainant giving explanation and requesting for 15 days time. The said letter was produced before this Commission on 24/01/2008 and the Opponent prayed for 15 days time for furnishing the information to the Complainant, which was granted, and the matter was posted for hearing on 15/02/2008. On 15/02/2008 the Opponent again sought time to file the reply, which was granted, and next hearing was fixed on 28/02/2008. On 28/02/2008 the Opponent neither filed the reply nor remained present and therefore, the summons was issued to the Opponent. On 02/07/2008, the Advocate for the Opponent filed a copy of the letter dated 01/07/2008 issued to the Complainant and made the submission that the information has been given to the Advocate for the Complainant. However, in the absence of the Complainant or his Advocate the position could not be verified. It was observed by the Commission that in spite of the several adjournments and the time given to the Opponent Shri. Pagui, he did not file the reply to the show cause contained in the order dated 15/01/2008. Even the copy of the letter dated 01/07/2008 produced by the Opponent pertains to the structure in respect of Sy. No. 245/2 which relates to only one application. It is also not clear whether the complete information sought by the Complainant has been provided or not.

5. In the meantime, the Complainant again approached this Commission by two separate complaints both dated 26/03/2008 praying interalia, for the direction to the Opponent to provide the information immediately, payment of penalty to the Complainant under section 20, compensation and for recommending disciplinary action. The notices in respect of both these Complaints were issued to the Opponent. Shri. Eknath Talkar filed his reply stating that he was posted as Village Panchayat Secretary Candolim from 04/04/2008 and he was given

additional charge of Village Panchayat Calangute to attend the duties three times in a week and requested for 2 week's time to verify the records. Shri. Eknath Talkar further submitted the names of the Village Panchayat Secretaries who held the post from September, 2007 to 3rd April, 2008. Accordingly, notices were issued to all Ex-Village Panchayat Secretaries who filed their replies. Shri. Talkar, though requested time, did not file any further reply.

6. The present Secretary was directed to furnish the details of the persons who held the posts of the Village Panchayat Secretary of Calangute from the date of the filing of the application seeking information by the Complainant till date. Accordingly, he has submitted the names and the periods as follows: -

1. Eknath Talkar – From 6.1.2007 to 8.3.2007
2. K. S. Mardolkar – From 8.3.2007 to 10.4.2007
3. Clifton Azavedo – From 10.4.2007 to 13.8.2007
4. M. S. Mardolkar – From 15.8.2007 to 5.10.2007
5. Clifton Azavedo – From 8.10.2007 to 28.10.2007
6. Eknath Talkar – From 29.10.2007 to 3.11.2007
7. Clifton Azavedo – From 6.12.2007 to 13.1.2008
8. K. D. Pagui – From 15.1.2008 to 9.3.2008
- b) K. D. Pagui – Sick leave from 26.3.2008 to 25.5.2008

7. The notices were also issued to the Ex-Village Panchayat Secretaries who held the post of Public Information Officer. We will now consider the replies filed by them. When the application dated 6/01/2007 was made, Shri. Eknath Talkar was the Public Information Officer. Shri. Talkar rejected the request of the Complainant vide his letter dated 5/2/2007. The Complainant filed an appeal before the first Appellate Authority i.e. Block Development Officer, Bardez who by his final order dated 25/09/2007 directed the Village Panchayat Secretary, Public Information Officer to provide the information within 15 days from the date of the passing of the order. Therefore, the period from the date of the passing of the order by the first Appellate Authority till date of the providing the information is relevant in order to fix responsibility and accountability on the Public Information Officer. As stated earlier, the first Appellate Authority has passed an order on 25/09/2007. As per the

reply filed by Shri. Mahesh S. Mardolkar, he was the Village Panchayat Secretary for the period from 13/9/2007 till 5/10/2007. He says that his tenure was only for 9 days before he was transferred to the office of the Block Development Officer, Bardez. He also stated that the total period he worked in the Village Panchayat Calangute was for about 47 days. He further stated that his predecessor did not hand over to him the complete charge of the Village Panchayat Secretary and the charge which was given to him on 24/8/2007 did not include the application of the Complainant. He submitted that he remained busy with the Panchayat work as no confidence motion scheduled for discussion on 1/10/2007 and that he was also summoned by the Police on account of the incident which took place on the date of the no confidence motion regarding the attack on some of the Panchayat members.

8. Shri. K. S. Govekar submitted that he was transferred to the Village Panchayat of Calangute by an order dated 22/02/2007 and was again transferred as Village Panchayat Secretary of Anjuna-Kaisua vide order dated 2/4/2007 and that he worked for a period of about 30 days. He also submitted that he was not the Village Panchayat Secretary of Calangute when the first Appellate Authority passed the order.

9. Shri. Clifton Azavedo submitted that he has taken charge of the Village Panchayat Secretary of Calangute on 2/4/2007 and thereafter also he took charge on various occasions as the Secretary of the said Panchayat. He has raised the preliminary objection stating that the application of the Complainant seeking information was not filed in accordance with law as it did not accompany with Rs.10/- court fee as required under the Act and therefore, application of the Complainant deserves to be dismissed. He submitted that he made several attempts personally to dispose off the application of the Complainant in terms of law during his tenure as the Secretary of Village Panchayat Calangute but he was technically not handed over the charge of the Secretary and therefore, he could not act. He stated that when the original application was made Shri. Kishore Pagui was the Secretary of the Village Panchayat Calangute who replied to the said application of the Complainant and that the application of the Complainant was disposed off by Shri. Pagui.

10. The present Secretary in his reply has submitted that he was

posted as Village Panchayat Secretary of the said Panchayat on 15/01/2008 and he was continued till 25/03/2008. He further stated that he was on leave from 26/03/2008 till 25/05/2008 due to sickness and joined again his duties from 26/05/2008. Thus, it is clear that when the order was passed by the Commission, Shri. Pagui was the Public Information Officer. He submitted that the order of the Commission was received by him on 18/01/2008.

11. The first Appellate Authority had passed an order on 25/9/2007 giving direction to provide information within 15 days and the Commission passed an order on 15/01/2008 giving direction to provide the information within a week's time and the information has been provided on 2/7/2008. When the first Appellate Authority has passed an order, Shri. M. S. Mardolkar was the Public Information Officer. However, according to him, he was there only for 9 days. Thereafter, Shri. Clifton Azavedo took charge of the Village Panchayat Secretary Calangute and he functioned from 8/10/2007 till 28/10/2007. Thus, Shri. Azavedo was the Public Information Officer for a period of about 20 days in the month of October, 2007 and therefore, it was his duty to provide the information in compliance with the order of the first Appellate Authority. Shri. C. Azavedo was the V.P. Secretary from 6/12/2007 to 13/01/2008. However, the details as to who held the post from 4/11/2007 to 5/12/2007 are not indicated in the reply filed by the present Secretary and period from 29/10/2007 to 3/11/2007 i.e. for 6 days during which period Eknath Talkar was the Secretary. Therefore, Shri. Clifton Azavedo was responsible to comply with the orders of the first Appellate Authority. Shri. Azavedo was well aware of the application and the order passed by the first Appellate Authority as in his reply he has raised the preliminary objection stating that the application of the Complainant did not accompany an application fee of Rs.10/-. It is pertinent to note here that the application of the Complainant was considered by the then Public Information Officer and also rejected. The appeals filed by the Complainant before the first Appellate Authority were also disposed off and the complaints filed before the Commission were also disposed off. At no point of time an objection was raised before this Commission stating that the application of the Complainant seeking information did not accompany application fee of Rs.10/-.

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application fee of Rs.10/- was not paid, the Public Information Officer could have very well informed the Complainant to that effect. That apart, this Commission has already held a view that non-payment of an application fee is a curable defect and the fee can be collected at the time of providing the information to the applicant. Shri. Azavedo has further stated that he made several attempts to provide the information but for technical reason he could not do so. We fail to understand what is meant by technical reason. Shri. Azavedo has also made a false statement in his reply stating that Shri. Pagui was the Village Panchayat Secretary when the original application was made and he has disposed off the same. It has come on record that it is Shri. Talkar who was the Public Information Officer who disposed off the same and not Shri. Pagui. Therefore, we feel that Shri. C. Azavedo has not acted diligently and bonafidely. He made a false statement before this Commission and also raised frivolous objection at this stage. He has not shown sufficient reason for not complying and providing the information to the Complainant in terms of the orders passed by the first Appellate Authority. There has been 58 days delay on the part of Shri. Azavedo in providing the information. The conduct of Shri. C. Azavedo does not appear to be bonafide. Shri. Azavedo functioned as Public Information Officer for 58 days and during these 58 days he has not complied with the orders of the first Appellate Authority nor given any justification. He is, therefore, liable for causing a delay of 58 days and the penalty at the rate of Rs.250/- per day delay comes to Rs.10,750/- even after excluding 15 days period provided by first Appellate Authority.

12. Coming now to the non compliance of the orders passed by this Commission. Shri. Kishore Pagui was the Public Information Officer. He admitted of having received the order of the Commission on 18/01/2008. The Commission had given the direction to the Public Information Officer to comply with the orders of the first Appellate Authority within one week's time. Thus, the order of the Commission ought to have been complied by Shri. Pagui on or before 25/01/2008. However, information has been provided to the Complainant only on 2/7/2008 that too after filing two separate complaints by the Complainant before this Commission for the non-compliance of the orders of this Commission. Shri. Pagui has sent an interim reply dated

14/02/2008 asking the Complainant to see him during office hours for physical verification. There is no provision in the Act for physical verification. The Public Information Officer has to provide the information or reject the request by giving reasons. Shri. Pagui also did not comply with the order passed by this Commission. At the request of Shri. Pagui, hearing was adjourned from time to time in penalty case for filing his reply and yet he did not file his reply till 8/8/2008 when he was asked to file his reply on 24/01/2008. He has taken a considerable long delay in just filing the reply and even on one occasion he remained absent as a result of which the Commission has to issue the summons. Shri. Pagui has also not acted diligently and bonafidely. He did not take due care to comply with the order of this Commission. The justification given by him for non compliance of the orders of Commission is also not convincing and satisfactory.

13. The other Village Panchayat Secretaries who held the post of the Public Information Officers were for a short period and therefore, we drop them from this proceedings.

14. Incidentally, it may be pointed out that the first appeal was filed before the Block Development Officer, Bardez on 21/02/2007 and the same was disposed off by the first Appellate Authority i.e. Block Development Officer on 25/09/2007 i.e. after 215 days as against the 30 days provided under sub-section (6) of section 19 of the Act. The first Appellate Authority, therefore, has also not adhered to the statutory provisions of the section 19(6) of the Act. He is, therefore, directed to be careful in future and ensure that the appeals filed before him under section 19(1) are disposed off within time limit specified in section 19(6) of the Act.

15. In these circumstances, we pass the following order: -

ORDER

16. Both the complaints are partly allowed. We take liberal view and impose penalty of Rs.5000/- on Shri. Clifton Azavedo, the then Village Panchayat Secretary for non compliance of the orders of the first Appellate Authority and for causing inordinate delay in furnishing the

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information and Rs.1000/- on Shri. K. D. Pagui, the present Village Panchayat Secretary for non compliance of the order of the Commission thereby causing a delay in providing the information.

17. The Block Development Officer, Bardez is directed to recover the penalty from the salary of Shri. C. Azavedo in two equal installments from the salary for the month of September and October, 2008. The penalty imposed on Shri. Pagui is to be recovered from his salary for the month of September, 2008.

18. The other prayers of the Complainant for recommending disciplinary proceedings and awarding compensation are rejected.

Pronounced in the open court, on this 20th day of August, 2008.

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

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