

GOA INFORMATION COMMISSION
Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Penalty case No. 14/2007-08 in
Complaint No: 12/2006-07

Shri Ranjit Satardekar,
1st Floor, Azavedo Building,
Patto, Panaji – Goa.

... Complainant.

V/s

The Public Information Officer,
The Member Secretary,
North Goa Planning and Development Authority,
1st Floor, Archdiocese Building,
Mala, Panaji – Goa.

... Opponent No. 1.

The Asst. Public Information Officer,
The Head Clerk,
North Goa Planning and Development Authority,
1st Floor, Archdiocese Building,
Mala, Panaji – Goa.

... Opponent No. 2.

CORAM:

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

(Per A. Venkataratnam)

Dated: 07/03/2008.

Complainant in person.

Adv. Hanumant Naik for the Opponents.

JUDGMENT

The Commission by its judgment and order dated 10/01/2008 directed the opponent No. 1 to show cause as to why a penalty of Rs. 250/- per day delay should not be imposed on him for the total delay of 42 days as prayed for by the Complainant. The Opponent No.1 filed his reply. Arguments of the Complainant as well as the learned Adv. for the Opponent were also heard.

2. The Opponent No.1 in his reply denied that there is a delay on his part in providing inspection of file to the Complainant. The Opponent No.1

...2/-

submitted that the Complainant did not specify the name of the owner of the land in whose favour Development Permission etc., was issued, nor had the Complainant given any reference number of the file and in the absence of these details it was difficult for the Opponent No.1 to furnish the desired information to the Complainant. We do not find any ambiguity in the application of the Complainant seeking inspection of the file. The Complainant has specifically requested for the inspection of the file in respect of the NOC/Clearances issued by the North Goa Planning and Development Authority for development of property bearing Sy. No. 260/4 of Taleigao Village and for erecting of construction/building therein which has also been admitted in para 4 of the reply. We fail to understand as to why further details such as the names of the owner are required to be given when the Complainant has specifically mentioned the description of the property by giving specific survey number. The Opponent could have made available the relevant file wherein the permission for erection of buildings and development were issued in respect of the property bearing Sy. No. 260/4.

3. The Opponent No.1 also further contended that the file containing the correspondence relating to the issue of completion certificate was made available to the Complainant which, infact, the Complainant did not ask for. The request of the Complainant was specific to the issue of permission for development and permission for construction of building and not for issue of occupancy/completion certificate. The Complainant brought to the notice of the Opponent No.1 that the file was not made available for inspection. The Opponent No.1 submitted that the delay has been caused due to non-availability of the concerned file and only after extensive efforts the file could be located and made available for inspection to the Complainant. The Opponent No.1 also submitted that the Opponent No.1 is functioning as a Member Secretary and has to carry out a number of important duties envisaged to the post. The Opponent No.1 stated that he had made genuine efforts to provide information to the Complainant and assured that in future the Opponent No.1 will make best effort to dispose off the applications made under the Act within the prescribed time.

4. Shri H. Naik, the learned Adv. for the Opponent submitted that this is the first instance of the Opponent No.1 that there has been a delay in providing the inspection. He contended that there is no gross violation as the delay is only for 42 days and prayed that a lenient view be taken. The Complainant submitted that the reply filed by the Opponent No.1 in response to the show cause notice is nothing but the repetition of the reply filed by the Opponent No.1 in the Complaint. He submitted that the Commission was satisfied prima-facie that the delay on the part of the Opponent was deliberate, intentional and malafide. He drew our attention to paras 11, 15 and 18 of our judgment and order. The Complainant also submitted that the provisions of section 20 of the Act are mandatory and therefore, the penalty of Rs. 250/- per day delay for 42 days should be imposed on the Opponent No.1.

5. We will now consider whether the delay of 42 days was deliberate, intentional or malafide. The contention of the Opponent No. 1 is that the application of the Complainant requesting the inspection was of general nature and not specific. We do not find any ambiguity in the application dated 30/03/2007 of the Complainant. The Complainant has specifically requested for inspection of the file pertaining to the issue of NOCs/Clearances for the development and also NOCs/Clearances for construction of the building in respect of the property bearing Sy. No. 250/4 of Village Taleigao. We are, therefore, not inclined to agree with the contention of the Opponent No. 1 that the application of the Complainant was not specific.

6. The Opponent No. 1 has kept the inspection on 30/04/2007, which is the last date for providing an inspection as per the provisions of the RTI Act. No justification/explanation has come from the Opponent No. 1 as to why an earlier date could not be fixed for inspection in-as-much-as the provisions of sub-section (1) of section 7 of the RTI Act contemplates that the information has to be provided as expeditiously as possible.

7. It is also pertinent to note that the Complainant after having inspected the file on 30/04/2007 which was made available to him, has categorically

stated and made an endorsement to the effect, that the concerned file containing the NOCs/Clearances issued for the development of the property as well as the issue of NOCs/Clearances for construction of buildings in respect of the property Sy. No. 250/4 of the Village Taleigao was not made available to the Complainant for inspection. This was followed by the letter dated 02/05/2007 of the Complainant. In spite of this letter, the Opponent No. 1 did not act on the endorsement made by the complainant on 30/04/2007 nor on the application dated 02/05/2007 of the Complainant. The Opponent No. 1 has also not justified the delay till 07/06/2007. It is only on 31/05/2007 the Opponent No. 1 informed the Complainant that the Complainant could carry out the inspection of the concerned file on 07/06/2007. Here again, there is a controversy between the complainant and the Opponent No. 1 regarding the receipt of the notices issued by the commission and issue of the letter dated 31/05/2007. The case of the Complainant is that the Opponent No. 1 acted and issued the letter dated 31/05/2007 only on receipt of the notices issued by this Commission. On the contrary, the Opponent No. 1 stated that the notices of this Commission were received only on 01/06/2007 and has nothing to do with the letter dated 31/05/2007. The Opponent has produced the Xerox copies of the notices addressed to both the Opponents where from it is seen that both the notices have been inwards with the date of 01/06/2007. The Complainant has alleged that on inspection of the envelope in which the notices was sent to the Opponent No. 2, it bears the postal stamp dated 31/05/2007 and the second envelope was in which the notice was sent to the Opponent No. 1 was not made available for inspection though the Complainant requested for the same, and therefore, the Complainant prayed that this Commission may give direction to the Opponent No. 1 to produce the envelope. We feel it is not necessary to call for the envelope because both the notices addressed to the Opponent No. 1 as well as to the Opponent No. 2 were received on the same day by the office of the Opponents and the notice addressed to the Opponent No. 1 was inwards first followed by the notice of the Opponent No. 2. Further, it is possible that both the notices of the Commission could have been sent in the same envelope as both the Opponents have their offices in the same building with the same postal address. The Complainant

drew our attention to the notices produced by the Opponents before this Commission stating that notices were inwarded and given numbers as 609 and other number is not legible. The said inward numbers have been cancelled and new inward numbers namely 623 and 624 have been given. The Complainant alleges that this has been done deliberately. The Opponent No. 1 has admitted of having cancelled earlier inward numbers and putting the new numbers stating that the earlier numbers were put "by mistake". We also find the notices received by the Opponents were given earlier the inward Nos. 609 and No. 610 which were cancelled and new numbers are given as 623 and 624. Infact, it was the duty of the Opponent to produce the inward register to show that notices were received and inwarded on 01/06/2007 as the burden lies on the Opponents in terms of the provisions of second provision to sub-section (1) of section 20 of the RTI Act. Since, the earlier inward numbers were cancelled and new inward numbers are given and the Opponent No. 1 has not produced the inward register, the Commission draws the adverse inference. However, the Commission does not wish to go into this as this is not relevant for deciding the present matter

8. The Complainant has cited several examples wherein the Complainant has made complaint to the opponent No. 1 in respect of the said property Sy. No. 250/4. The Complainant is also claiming interest over the said property. Therefore, it can very well be implied that the Opponent No. 1 has deliberately not provided the concerned file for inspection to the Complainant. The reason given by the Opponent No. 1 that the request of the Complainant was not specific is also not acceptable. The Opponent No. 1 did not act diligently inspite of the Complainant having brought to the notice of the Opponent No. 1 that the concerned file was not made available vide his endorsement dated 30/04/2007 and subsequent letter dated 02/05/2007. The Opponent No. 1 has not given justification for such a long delay in making available the concerned file to the Complainant for inspection.

9. The Opponent No. 1 had informed the Complainant vide letter dated 24/04/2007 that the request of the Complainant to inspect the file bearing No. NGPDA/185 was considered by the authority. Infact, the Complainant did not ask the inspection of the file bearing No. NGPDA/185. The Opponent

No. 1 was well aware that the file bearing No. NGPDA/185 did not contain the papers/records pertaining to the issue of NOCs/Clearances for the development and construction of building. The request of the Complainant for inspecting the concerned and relevant file was considered by the Opponents and intimated to the Complainant vide letter dated 31/05/2007. In other words, the request dated 30/03/2007 of the Complainant was not considered by the Opponent prior to that and no explanation has come from the Opponent no. 1 in this regard.

10. All these go to show that the Opponent No. 1 did not provide inspection to the Complainant of the concerned file as the Complainant has alleged several illegalities while issuing the NOCs/Clearances for the Development as well as for construction of building in the said property Sy. No. 250/4 Village Taleigao.

11. We are, therefore satisfied that the Opponent No.1 has deliberately, intentionally with malafide motive has not provided the inspection of the correct file to the Complainant. However, this being the first instance and since the Opponent No. 1 made efforts to trace the relevant file and made available for inspection, we feel that a lenient view needs to be taken keeping in view the facts and circumstances of the present case. The Complainant submitted that the provisions of section 20 of the Act are mandatory in nature. We are not inclined to agree with the Complainant that the Commission has to arithmetically calculate the penalty and impose the same on the PIO. The fact and circumstance is to be taken into consideration before imposing the penalty. As per the said section 20 of the Act an opportunity has to be given to the PIO before imposing the penalty. This being the first instance, we, take the lenient view and impose a nominal penalty of Rs. 1000/- on the Opponent No. 1 with a warning that in future he should ensure that the application under the Act are disposed off within the time limit specified in the Act.

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

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

