

GOA INFORMATION COMMISSION

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

Penalty Case No. 26/2006

In

Complaint No. 7/2006/VP

Smt. Agnes D'Silva
R/o Vignesh Ward,
Maddo waddo, Calangute,
Bardez – Goa.

..... Complainant.

V/s.

Public Information Officer,
Village Panchayat Calangute,
Naika Waddo, Bardez – Goa.

..... Opponent.

CORAM :

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

(Per A. Venkataratnam)

Dated: 10/10/2007.

Adv. Pranay Kamat for the Opponent.

ORDER

This disposes off the show cause notice issued by this Commission on 30th March, 2007 in Complaint No.07/2006/VP. By that order-cum-notice, we have directed (i) the Director of Panchayats to conduct an enquiry on the missing minutes book of 1993 wherein Resolution No. 4 (c) was taken by the Calangute Panchayat on 9/12/1993 and fix up responsibility; (ii) to award compensation to the Complainant for the harassment caused to her; (iii) issued a show cause notice to the Opponent for delaying the information as well as giving incomplete information. The Opponent has filed a Writ Petition against this order bearing No.326/2007 in the High Court of Bombay at Goa, Panaji Bench. The Hon'ble High Court by its order dated 9/7/2007, stayed the action by the Commission to award compensation to the Complainant and had given liberty to the Commission to proceed further to dispose off the penalty matter against the Opponent. Accordingly, a reply to the show cause notice was filed by the Opponent on 13/8/2007 which was followed by arguments by his learned Adv. Pranay Kamat.

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2. While arguing the matter, the learned Advocate submitted that no notice was issued to his client under Section 18. There is no doubt that the complaint is filed by the Complainant under Section 18 of the Right to Information Act, 2005 (for short the RTI Act). After holding a number of hearings and giving a number of opportunities to the Opponent one interim order was passed by this Commission on 5/1/2007 directing him to produce certain records in original; and finally the notice-cum-order dated 30th March, 2007 was passed giving directions as mentioned above. Mere reading of the order shows clearly that the grounds on which the Commission wanted to issue the show cause are clearly mentioned therein. There is no separate notice required to be issued under Section 18 or 19 mentioning the provisions of the Act separately. No doubt, the penalty proceedings have to be initiated under Section 20 of the Act on the grounds mentioned therein. The delay in giving information, without reasonable cause or refusing to receive an application for information or malafidely denying request for information or knowingly giving incorrect, incomplete or misleading information or destroying the information in order to avoid giving the information are some of the grounds mentioned under Section 20. All these grounds are independent of one another and even one ground is sufficient for the Commission to initiate the show cause notice proceedings under Section 20 before the penalty is imposed on the Public Information Officer. Obviously, the Commission can conclude the presence or absence of any of the above grounds only on conducting an enquiry under Section 18 or hearing the second appeal under Section 19 thereof. All the proceedings under Section 18 or 19 and 20 are interlinked and have to be read together. The learned Advocate, thereafter, proceeded to state that the penalty proceedings can be started only after second appeal is decided under Section 19 and not after Section 18 inquiry proceedings. We are afraid we are not in a position to agree with this argument. A bare reading of the Section 20 itself shows that the penalty proceedings can be initiated when a prima facie opinion is formed by the Commission at the time of deciding "any complaint or appeal". The complaint under Section 18 was already disposed off and these penalty proceedings are a direct result of the enquiry under Section 18 for the delay in giving correct information. Therefore, it is not correct to insist that the penalty proceedings can be initiated only after second appeal and not after inquiry under Section 18. The learned Advocate, thereafter, submitted that the Opponent's conduct was positive as he was always ready to give the information available and at no stage he has withheld any information. However, from the records, we have seen that not only the Opponent did not give any information within the statutory period of 30 days provided under

Section 7(1) thereof of the RTI Act, he has given part of the information only on 22/7/2006 i.e. after the receipt of the notice from this Commission. Pressed for giving entire information, he has given further information on 12/10/2006. Again, the learned Advocate submitted that the Opponent has joined the said Panchayat recently, he was not familiar with new RTI Act and its provision and that he was busy with audit etc. This could justify to some extent the delay in giving the information but not the non-submission of the original Panchayat records called for by this Commission, in respect of the tampering with one of the documents. The matter of the tampering of the letter dated 29/11/1993 issued by the Town and Country Planning Department addressed to Village Panchayat was dealt with by us in our earlier order dated 30/3/2007. There is no denial that the then Village Panchayat Secretary and its officials have added one condition No. 6 in the above letter mentioning a need to provide a 3 mts. access through the property of the Complainant as if such a condition was recommended by the Town and Country Planning Department at that time. The matter came to light only when the Complainant has obtained the copy from the Town and Country Planning Department also and compared with the copy provided by the Village Panchayat now.

3. On this matter of discrepancy, the learned Advocate has taken two arguments, firstly, that his client was not working at that time with the Panchayat when the Resolution was taken to impose such a condition in the licence issued to the Complainant and secondly, that he has faithfully given copy of the documents already available with the Panchayat. Hence, the Opponent is not personally liable for any such tampering even if there is tampering. The copy of the minutes book, however, imposing this condition is not available for inspection. We have separately ordered the investigation by the Director of Panchayats in the matter. The point is not about the competence or otherwise of the Panchayat to impose any reasonable condition while granting the licence for the construction of a house but is about adding a condition in the original recommendatory letter from the Town and Country Planning Department as if Panchayat has acted on the advice of the Technical Department. This conduct is objectionable. However, as the Opponent is not personally involved in this, we accept the argument of the learned Advocate that the Opponent is not responsible for this.

4. Shri P. Kamat, the learned Adv. for the Opponent drew our attention to para 4 of our order dated 30/03/2007 and submitted that the findings recorded therein do not pertain to the present matter but pertain to the other

case. On perusal of the records of the complaint No. 7, the reply dated 04/09/2006 is very much on records wherein the Opponent requested for one month time on the ground that the records of the last year were submitted to the BDO for audit inspection. He has further stated that besides he was also holding the charge of 2 Panchayats. The same is also recorded in the roznama dated 04/09/2006 of the said file. Further, the facts stated by the Commission in the said para that the Opponent by his letter dated 12/10/2006 had informed the Complainant that 3 more license were issued also pertains to the present matter because the other complaint bearing No. 6 filed by the Complainant was already disposed off by the Commission by order dated 28/09/2006. Therefore, we are not inclined to agree with the learned Adv. for the Opponent that the facts stated in Para 4 of the order dated 30/03/2007 do not pertain to the present case.

5. The summon's was issued to the Opponent to remain present before this Commission on 15-11-2006 at 11.00 a.m. along with Panchayat records containing complaint, Panchayat resolutions, license issued for construction of residential building. However, the Opponent along with his Advocate remained present on the same date at 12.10 p.m. but did not produce original resolution book as directed by the Commission and therefore the Commission directed the Opponent to produce the same on 17-11-2006. The Opponent instead of producing the resolution book, submitted the letter dated 17-11-2006 stating that the approval for issue of license was issued in the year 1993 and that he wanted to place the matter before the Panchayat body in the monthly meeting scheduled on 30-11-2006. The Opponent therefore prayed for time till 1-12-2006 to place the relevant fact and record before this Commission. As, inspite of the direction by the Commission and also the letter dated 17-11-2006 of the Opponent, the Opponent did not produce the original resolution book before the Commission, the Commission was forced to pass an Order dated 5-1-2007 giving one more opportunity to the Opponent to remain present before this Commission along with the original resolution book on 30-1-2007 at 11 a.m. Again on 30-1-2007 the Learned Advocate for the Opponent prayed for time for filing affidavit. It was not the case of the Opponent that the original resolution book of the Panchayat was missing but it is only when the Commission pressed for the production of resolution book, for the first time the Opponent came with the plea in his affidavit dated 15-2-2007 stating that the original resolution book of the year 1993 was not found in the Panchayat records. This shows the careless attitude of the Opponent who has taken the matter very lightly inspite of the direction from

the Commission. The conduct of the Opponent is certainly not bonafide. If the original resolution book was not found, the Opponent at the initial step itself would have brought the fact to the notice of the Commission. The Opponent as the Public Information Officer and being the Village Panchayat Secretary is the custodian of the records of the Panchayat. There was no need for the Opponent to place the matter before the meeting of the Panchayat. The Opponent has not cited any provisions of the Panchayat Raj Act according to which Panchayat has to take the approval of the Panchayat body to produce the original records before this Commission. The Opponent has deliberately delayed the matter and it is only when the Commission directed him to remain present with the original books by order dated 5-1-2007, the Opponent has filed an affidavit stating that the original minute books are not found in the records. The whole conduct of the Opponent in dealing with this matter shows that the Opponent has not acted diligently but tried to avoid to place the original minutes book before this Commission, and subsequently came up with the plea that the original minutes book is not available with the Panchayat records. In the letter dated 17-11-2006 filed before this Commission by the Opponent, the Opponent stated that the meeting of the Panchayat was scheduled on 30-11-2006 whereas as can be seen from the minutes, the meeting was held on 28-11-2006. Thus, the Opponent tried to mislead the Commission.

6. It is pertinent to note that the Commission is not at all concerned with the endorsement of the condition either in the resolution or the letter of Town and Country Planning Department. The Commission did not seek any explanation from the Opponent regarding the same. What the Commission wanted was only to peruse the original resolution book of the Panchayat wherein the Panchayat has resolved to grant the permission for construction of residential building. The Opponent has not discharged the burden imposed on him in the proviso to section 20 of the Act to prove that he acted reasonably and diligently and therefore he is liable for imposition of penalty. The Opponent has not explained his conduct to place the matter before the Panchayat body for the production of the original minutes book before this Commission. Therefore, we are not at all satisfied about the delay in producing the original resolution records to the Commission itself. We, therefore, find that the Opponent has not discharged his duties as the Public Information Officer diligently and therefore, he is liable for the imposition of the penalty. The Learned Advocate submitted that this is the first case of the Opponent and he was ignorant about the consequences of the law and therefore lenient view be taken. We accept his view and impose nominal

penalty of Rs. 1000/- payable by Opponent within one month from the date of this Order. In case the Opponent fails to pay the penalty within this specified period, we authorize Block Development Officer of Bardez Taluka to recover the amount of the penalty from the salary of November, 2007 and deposit it in the Government treasury.

Pronounced in the open court on this 10th day of October, 2007.

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

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