

GOA HUMAN RIGHTS COMMISSION
PANAJI –GOA

Proceeding No. 37/2012

INQUIRY REPORT

God exists for welfare of mankind. The peculiar facts of the present proceeding would give the impression as if God has pitted himself against human beings, that too over a very insignificant matter.

2. The present proceeding was initiated on the basis of letter of the two Complainants dated 03/09/2012 addressed to the Sarpanch, Village Panchayat Virnoda, Pernem – Goa and a copy whereof was sent to this Commission. The contents of such letter are extracted hereunder:

Sub: Request for providing access road to our private property near Mulvir Temple at Malpe Pernem Goa.

Sir,

We are a resident of malpe pedne Goa, having our ancestral property in the proximity of Mulvir Temple. In the event of untoward incidents and emergencies we have been facing a number of hardships since generations.

It is regrettable to note that even after the period of nearly 50 years of Goa's liberation we have been deprived of our basic right of having the facility for access road to our vehicle to our own property.

I hope you will definitely agree and appreciate our request, to be thoughtful and sympathetic to relieve us from our anguish and provide us with access road to our private property.

3. On the basis of the said letter, notices were initially issued to the Director of Panchayat and the Sarpanch, Village Panchayat Virnoda as Respondents No.1 and 2 as per Order dated 26/09/2012. Reply was filed by the Director of Panchayat which revealed that the road in question was under the control of P.W.D. and the steps on such road, which impede access to the properties of the two Complainants, had been constructed by the Bhagwati Rawalnath Devasthan Committee. The Respondent No.2/Sarpanch also stated likewise. Therefore, the Principal Chief Engineer, P.W.D., the Assistant Engineer, P.W.D., Pernem and the Secretary, Bhagwati Rawalnath Devasthan Committee were impleaded as Respondents No.3, 4 and 5 respectively as per Order dated 03/01/2013. The Respondents No.3 and 4 filed their reply wherein it is stated that an asphalt road

exists from the main road junction at NH17 at Malpem to Mulvir Temple, part of which is along the property of the Applicants. It is further indicated that there are steps and (round about) on this road at a distance of 358 mtrs. from the main road junction as shown in the sketch enclosed with the reply. It is further indicated that the road is shown in the Survey Plan but steps are not shown and such road is maintained by the P.W.D. and the road had been strengthened by a hot mix carpet in the year 2006 upto the steps. It is further stated that the further portion of the road i.e. 122 mtrs. from the steps to the temple was in a dilapidated condition and in need of urgent repairs. It has been further stated “... the steps which appeared to have been constructed by the Bhagwati Ravalnath Devasthan and it is not known to this office whether there was any objection to reinstate the road by removing the steps. There is no record available in this office regarding the construction of steps. On local inquiry it is learnt that the steps are existing for many years. The road can be reinstated by removing the steps if the Commission orders to do so.”

4. When this matter came up for hearing on 24/04/2013, Respondent No.5 prayed for adjournment on the ground that the documents on the basis of which proceeding had been initiated had not been furnished to Respondent No.5. Accordingly, copies of letter dated 03/09/2012 and Written Submission of Complainant made on 03/01/2013 along with copy of Government Survey Map were furnished to Respondent No.5. The copy of reply of Respondent No.3 and 4 was also served on Respondent No.5.

5. Respondent No.5 filed reply on 19/06/2013 and the Complainants filed eight coloured photographs which were taken on record. In its reply, Respondent No.5 stated interalia that this Commission has no jurisdiction to entertain the matter as there is no violation of any constitutional right or human right of the Complainants. It is also stated that the complaint was barred by limitation. It is further stated that in the complaint dated 03/09/2012 before the Village Panchayat, the Complainant “.....has clearly admitted that he does not have access road for his property for last more than 50 years even after liberation of Goa. It is stated that on this ground alone his complaint is required to be rejected.”

6. By referring to reply of Respondents No.3 and 4, it is further stated “..... the Respondent denies that the complaint made by the Complainant is with respect to the public road within the power of PWD”. In the reply the Respondent

No.3 and 4 have spoken about the road passing through the private property of the complainant without giving their survey numbers with ulterior motive. It is stated that it is thus admitted by the Respondent No.3 and 4 that the alleged road is not the PWD road. "... even from the reply of Respondents No.3 and 4, it appears that the alleged road never existed at least from the point where steps are shown on the location Plan by Respondents No.3 and 4 ...". The Respondent No.5 further denied that there was a road wide enough for accommodating the vehicles of the Complainant. It is further stated ".....assuming without admitting that the contents of the complaint under reply is correct it is submitted that it is at the highest a Civil dispute where remedies are provided under the civil law and this Hon'ble Court has no jurisdiction to decide on the same."

7. After the pleadings were completed, the Complainants were called upon to file their Affidavit in Evidence. The Complainant No.2 in his Affidavit-in-Evidence has stated that the Temple is approximately at a distance of 600 mtrs. from the National Highway passing through Village Malpe and at a distance of about 450 mtrs. from the Temple steps have been constructed. It is further stated by him that the road had been constructed by Public Works Department. He has further stated that because of the existence of the steps, the Complainants are not able to take their two wheelers and four wheelers to their respective houses. The Complainant No.2 has narrated about the occasion when his ailing mother had to be brought on a chair from his house to the main road as Ambulance could not be brought up to the house. He has further stated that the Village Panchayat has not issued any NOC for construction of steps. The Complainant No.1 in his Affidavit has also stated likewise. Both the Complainants were cross-examined by the Advocate for the Respondent No.5. In course of examination and cross examination held on 26/09/2013, the Complainant No.2 had produced the certified copies of Government Plan marked as Exhibit-CW1/A, certified copy of letter dated 03/09/2012 marked as Exhibit-CW1/B, certified copy of letter dated 17/05/2012 from Village Panchayat Virnoda marked as Exhibit-CW1/C, copy of letter from the Director of Panchayat dated 01/01/2013 addressed to this Commission marked as Exhibit-CW1/D and certified copy of Plan marked as Exhibit-CW1/E and the eight photographs filed by him marked as Exhibit-CW1/F. In course of his cross-examination he has stated that his property is in Survey No.201/4 and 201/5 and the property of Complainant No.1 is in Survey No.201/7. He has stated that there were steps before the year 1990 without any ramp and he constructed ramp in the year 1990 to enable him to take his two

wheeler. He has further stated that he had purchased a four wheeler in December, 2011. He also produced copy of application addressed to the Secretary, Panchayat which is marked as Exhibit-CW1/G and Plan of his property as Exhibit-CW1/H. He has stated that the Temple could be in existence for more than 100 years and denied that the steps were 100 years old. CW2 (Complainant No.1) has stated in cross-examination that the circular construction appearing in photo No.4 (part of CW1/F-Colly) was constructed about 2-3 years before when all the 5 steps were reconstructed.

8. On behalf of Respondent No.5, Shri Pradeep Balkrishna Deshprabhu, the Mahajan of Shri Dev Mulvir Temple has been examined. He has stated that during the month of Shravan on every Monday, there is a pooja in Shri Dev Mulvir Temple and there is a huge congregation of devotees as they are given free Prasad which includes free meals. He has further stated that in order to go to Shri Dev Mulvir Temple, one has to climb the steps which are constructed at the time of time of construction of said Temple and such steps are at a distance of approximately 125 mtrs. of Shri Dev Mulvir Temple. He has further stated that there was no road at any point of time from the main road to the house of the Complainants. In course of examination, he has stated that after the steps "there is a pathway varying from 1.5 to 2 mtrs. upto the Temple." He denied the suggestion that the pathway is actually a tar road. He has further stated that only the existing steps had been repaired for which no permission had been taken from PWD or from the Village Panchayat. He has further stated that earlier four steps were there but at the time of repairing the Devasthan increased the number of steps from four to five. He has further stated that the circular structure near the steps was in existence earlier and had been merely repaired for which no permission had been taken. He admitted that on account of the existence of the steps, no four wheeler can go up to the house of the Complainants but denied that the Complainants had a right to access to go to their houses by four wheeler vehicles.

9. The respective Advocates for the Complainants and Respondent No.5 have made oral submissions and also filed their Written Arguments. Site Inspection was held by the Commission on 26/03/2014. Copies of the Report were furnished to Respondent No.5 and opportunity was given to Parties to make further submissions.

Accordingly, Respondent No.5 also filed his further Written Submissions.

10. The Advocate for the Respondent No.5 has filed a Written Note of Submission raising several legal and technical contentions. One such technical objection is relating to the Site Inspection conducted by the Commission. At the threshold, the Commission had visited the site on 22/02/2013 with a view to appreciate the nature of the dispute but no formal report had been prepared. Subsequently, after conclusion of hearing and filing of Written Notes of Submission, the Commission again visited the site on 26/03/2014 in presence of the Parties or their representatives and the Site Inspection Report was prepared and copies thereof were furnished to the Complainants and Respondent No.5 with opportunity for further oral submissions/written submissions, if any, as apparent from the Order dated 02/04/2014. Subsequently on 30/04/2014, the Advocate for the Complainants declined to make any further submissions and the Advocate for Respondent No.5 filed Additional Written Submissions. The Site Inspection has been conducted with a view to appreciate the existing materials on record.

11. From the materials on record, it is apparent that there is an asphalt road from National Highway 17 from Malpem junction towards southern direction up to Mulvir Temple, which is shown as PWD road in the Survey Plan produced by PWD (Respondents No.3 and 4). In the year 2005, the road had been repaired by the PWD up to about 380 mtrs. from the junction but the rest portion from the steps to Mulvir Temple had not been repaired. It is necessary to emphasize that Respondent No.5 at no point of time has claimed that the road (which is described as "pathway" by Respondent No.5) belongs to the Devasthan or Mulvir Temple. It is also apparent that the properties of Complainants No.1 and 2 abut such road on the western side. The width of the road from the steps up to the Temple vary at different places but it is obvious that a four wheeler can pass through such road. It is further apparent that because of the existence of five steps at a distance of about 380 mtrs. from the junction at NH17 near Malpem Village, vehicles cannot go beyond such steps thereby preventing any vehicular access up to the houses of the Complainants. From the materials on record it is also apparent that the steps were constructed long ago obviously by the Temple and subsequently reconstructed recently by the Temple (Devasthan) without any permission either from PWD or from the Panchayat or from any Governmental Agency.

12. Right to access of an owner to a public road abutting his property is always considered as a natural right available to everyone. Such right can be considered

as part of right to life and liberty as enshrined in Article-21 of the Constitution of India. Nature of such right would obviously vary from time to time and even from place to place. For example, before the advent of mechanical transport in the shape of motor vehicles the nature of using a road or an access must have been different from such a right in the modern day context. With march of time one can expect that what was merely a footpath or passage can become an access for a mechanised vehicle such as a four wheeler or a two wheeler. No one can claim the right of impeding the right of another to free access through a road/passage/pathway belonging to the State. It may be that the road from junction NH17 near Village Malpem right up to the property of Devasthan (Temple) might have been constructed with a view to provide access to worshippers to the temple but that would not make such a road a private road belonging to the Temple. It may be noted that when the steps were initially constructed, the owners of the property who had also right to use the road would not have felt any inconvenience because there were no two wheelers or four wheelers used by them at that time. The very fact that a ramp had been constructed to enable the two wheelers to go clearly indicated the peaceful co-existence between the deity and the owners of the properties abutting the road. Since the road does not belong to the Mulvir Temple or Devasthan and the construction and re-construction of steps and the pimpal have the effect of impeding the access to persons who are residing in properties abutting said road, such impediments are required to be removed by the authorities concerned namely Public Works Department.

13. In *Olga Tellis and other v/s Bombay Municipal Corporation* reported in 1986 SC 180 it was observed: “.....foothpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use No one has the right to make use of a public property for a private purpose without the requisite authorisation and therefore it is erroneous to contend that the pavement dwellers have the right to encroach upon pavement by constructing dwellings thereon. Public streets of which pavements form a part are primarily dedicated for the purpose of passing and re-passing The existence of dwellings on the pavements is unquestionably a source of nuisance to the public, at least for the reason that they are denied the use of pavements for passing and re-passing.....”

14. In *State of H. P. v/s Umed Ram* reported in 1986 (2) SCC 68 the Supreme Court observed that the right to life includes the quality of life as

understood in its richness and fullness by the ambit of the Constitution and access to road way considered to be an access to life itself.

15. In *Daulatsinhji Savantsinhji Solank and others v/s Executive Engineer*, the Gujarat High Court in its judgement dated 08/05/1996 reported in 1996 Law Suit (Guj) 233 (9) observed “It is now well accepted that right to life guaranteed by Article-21 of the Constitution of India, in its wide expansion also includes the right of the rural people to have easy access to their rural areas.....” “.....It is in this context that easy access to villages is regarded as part and parcel of right to life for rural citizens.....”

16. Though in a different context, the Supreme Court in the case of *Consumer Education & Research Centre v/s Union of India* reported in 1995 (3) SCC had observed: “..... The expression “life” assured in Article-21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the work place and leisure,”

“..... What is due cannot be ascertained by absolute standard which keeps changing depending upon the time, place and circumstance.

17. In the written note of submission, the Advocate for Respondent No.5 relied upon two decisions of the Bombay High Court. In 2010 (2) BCR 560, the High Court of Bombay was considering the question as to whether non allotment of a flat amounted to violation of human right and ultimately held that since right to property was no longer a fundamental right, the non-allotment of a flat did not violate any fundamental right/human right and as such the Human Rights Commission has no jurisdiction to entertain such complaint.

18. In the present case there is no issue relating to violation of right to property but the question is right to access. In our considered opinion, the right to access to a public road by the owner of property abutting such public road is a natural right coming within the purview of Article-21 of the Constitution of India and any unauthorised violation of such right can be considered a violation of human right as defined under the Act and the ratio of the decision of the Bombay High Court is not applicable to the facts and circumstances of the present dispute.

19. Similarly the decision reported in 2006 (1) BCR 468 is not at all applicable to the peculiar facts and circumstances in the present case. In the said case the

core question was relating to grant of approval to the appointment of a Craft Teacher and initially the Human Rights Commission had held that it had no jurisdiction but subsequently reviewed such order and apparently gave direction to the said Government to accord approval. In the above context the Bombay High Court observed that once the Commission had held that it had no jurisdiction there was no question of entertaining second complaint and the order passed in the second complaint was in fact the order reviewing an earlier order. The High Court had also observed that the matter practically related to a case of termination and statutory remedy was available under Maharashtra Employees of High School Act, 1997 and since the Statute itself provided mechanism for redressal by way of appeal or revision, the Commission ordinarily should not entertain the complaint.

It is thus clear that the aforesaid decision was on a completely different factual background and is not at all applicable to the facts of the present case.

20. The Advocate for the Respondent No.5 has raised the question of limitation. The right of using a public road is a continuing right. Moreover, the road belongs to PWD and not the temple. It is the duty of the PWD Authorities and the State to ensure that a public road remains free from any impediments or encroachment and non-removal of any such impediment is a failure on the part of such Authorities to discharge their expected duty. Since the road belongs to the State and not to the Temple, the plea of limitation raised by Respondent No.5 is without any substance.

21. It is also to be noticed that in the present case, the Respondent No.5 has not at all indicated as to how the right of Temple/Devasthan is being curtailed in any manner. The steps are admittedly constructed on a public road belonging to the State Government and not a private road belonging to the Temple/Devasthan. Removal of the steps either wholly or partially is not going to effect the access of the devotees to the Temple and would result in providing vehicular access to the two owners of the property abutting such road. It is indeed strange that Respondent No.5 and his Advocate representing the Mulvir Temple/Devasthan would raise such technical objection, acceptance of which would result in depriving the Complainants of vehicular access to their own properties. It is already noticed from the evidence on record that there was an occasion when the mother of Complainant No.2 had to be shifted to the hospital but the Ambulance could not go beyond the steps to the house of Complainant No.2.

22. The photographs which have been filed by the Complainants indicate that prior to the present renovation there were four steps and a ramp was in existence which facilitated access by user of two wheeler. Even such ramp has been removed by the reconstruction of the steps.

It is no doubt true that the steps were in existence at least since 1990 as admitted by the Complainants and the ramp was constructed by Complainant No.2 only in the year 1990-91. This however, doesn't mean that the two Complainants have no right to use the road for access by four wheeler in future. It is trite saying that even a "cart track" can become a "car track" in course of time. The core question is whether anybody has right to create any obstacle on a public road owned and maintained by State Government/PWD. As already emphasized, the Respondent No.5 has not whispered anywhere that the road from NH17 up to Mulvir Temple which passes along the properties of several private owners including the Complainants is a private road of the Temple/Devasthan nor it has indicated about any prejudice if the steps or part of the steps are removed to enable the Complainants to have vehicular access.

23. In course of the inspection at the spot, the Complainants suggested that their necessity to use the road from the point where steps have been constructed up to their houses can be met even if only a part of the steps are removed and a road can be constructed by utilizing part of the property belonging to Complainant No.2. It is a matter which the PWD can consider so that only a portion of the steps is required to be demolished and not the entire steps.

In the above background, we make the following recommendations:

The steps which have been unauthorisedly constructed without taking any permission either from the Panchayat or from PWD are required to be demolished so that vehicular access can be provided to the occupants of properties abutting the road. The question whether only part of the steps should be demolished or the entire steps and the pimpal ped should be demolished, is a matter left to the discretion of the PWD. PWD can make appropriate arrangement to ensure that only vehicles can go upto the houses of the Complainants and not upto the temple to prevent any unnecessary clogging of the road near the temple.

Date: 04/06/2014

Place: Panaji – Goa

Sd/-
(Justice P. K. Misra)
Chairperson
Goa Human Rights Commission

Sd/-
(A. D. Salkar)
Member
Goa Human Rights Commission

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(J. A. Keny)
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