

BEFORE THE GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA

Proceeding No.70/2020

Shri Sanjay Kumar Puthal,
Apartment No.2, Upper Ground Floor,
Mudras Mansion, Calapor,
Tiswadi-Goa.

... Complainant

V/s

- 1) The Police Inspector
Old Goa Police Station,
Old Goa, Tiswadi – Goa
- 2) The Executive Engineer,
Works Division III(PHEN),
Public Works Department,
St. Inez, Panaji – Goa.

... Respondents

Proceeding No.134/2020

- 1) Dr. Ketan Govekar,
- 2) Supriyanka Govekar,
Both r/o Apartment 1, Mudras Mansion,
Odlem Bhat, Santacruz,
Tiswadi-Goa.

... Complainants

V/s

- 1) The Chief Secretary,
Government of Goa,
Secretariat, Porvorim-Goa.
- 2) The Collector,
North Goa District,
Panaji-Goa.
- 3) The Chief Engineer,
Public Works Department,
Altinho, Panaji-Goa.
- 4) The Chief Electrical Engineer,
Electricity Department,
Panaji-Goa.

... Respondents

...2/-

Proceeding No.225/2020

Shri Paresh Vasant Salgonkar,
R/o Mudras Mansion,
H. No.296, Upper Ground Floor,
Apartment No.3, Vodlem Bhat,
Calapur, Santa cruz,
Tiswadi – Goa.

... Complainant

V/s

- 1) The Police Inspector
Old Goa Police Station,
Old Goa, Tiswadi – Goa
- 2) The Health Officer,
Primary Health Centre,
Chimbel – Goa.
- 3) The Assistant Engineer,
Sub Div. I, Division III,
Public Works Department,
St. Inez, Panaji – Goa.

... Respondents

Proceeding No.252/2020

Shri Sanjay Kumar Puthal,
Apartment No.2, Upper Ground Floor,
Resident of Mudras Mansion,
H. No.296, Vodlem Bhat Calapur,
Santa-Cruz, Tiswadi-Goa.

... Complainant

V/s

- 1) The Assistant Engineer,
S.D. - I, W.D.- III (PHEN),
Public Works Department,
St. Inez, Panaji-Goa.
- 2) The Police Inspector,
Old Goa Police Station,
Old Goa, Tiswadi-Goa.

... Respondents

INQUIRY REPORT

(28th September, 2021)

These 4 complaints are being disposed off by a Common Report, as each Complainant/s is residing in a separate Flat

...3/-

in the same building and the grievances are similar i.e. in respect of the disconnection of the Water supply to the building and the disconnection of the Electricity Meter of the Common Facilities.

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2. The Complaint dated 21/04/2020 was received from the Complainant, Shri Sanjay Kumar Puthal, arising from the disconnection of common electricity meter in the Mudras Mansion Building at St. Cruz, in which the Complainant is the owner of Apartment No.2.

3. On perusing the complaint, the Commission by Order dated 06/05/2020 called for the report from the two Respondents therein, i.e. (1) the P.I., Old Goa Police Station and (2) the Executive Engineer, W.D.-III, PWD.

4. The Respondent No.1 therein filed their reply dated 23/10/2020.

5. At the stage of arguments, the Complainant was heard. P.I. Shri Krishna Sinari on behalf of the Respondent No.1 and Shri Uttam Shetye, Assistant Engineer for the Respondent No.2 were also heard.

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6. The Complaint dated 22/06/2020 was received from the Complainants therein, Dr. Ketan Govekar and Supriyankar Govekar, who are owners of the Apartment 1, on the second floor, by virtue of the Deed of Sale dated 12/06/2018. The complaint is in respect of the disconnection of the water supply to the Mudras Mansion, St. Cruz by the PWD and also for the disconnection by the Electricity Department of the common electricity connection.

7. On perusing the complaint, the Commission by Order dated 26/06/2020 called for the report from the four Respondents therein, i.e. (1) The Chief Secretary, Govt. of Goa, (2) The Collector, North Goa District, (3) The Chief Engineer, PWD and (4) The Chief Electrical Engineer, Electricity Department.

8. The Respondent No.4 therein filed their reply dated 27/07/2020. So also the Respondent No.3 filed their reply on 27/07/2020 and the Respondent No.2 filed their reply on 16/12/2020.

9. Thereafter, the Complainant filed two Rejoinders on 02/09/2020. Written arguments were filed by the Complainants therein.

10. The Commission heard the Complainants. Advocate Ms. Harsha Naik for the Respondents No.1 & 3 and Shri Atul Ghate, Assistant Engineer was heard on behalf of the Respondent No.4.

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11. The Complaint dated 30/09/2020 was received from the Complainant, Shri Paresh Vasant Salgaonkar, about disconnection of the water supply to the building Mudras Mansion at St. Cruz, where the Complainant is in possession of the Flat No.3.

12. On perusing the complaint, the Commission by Order dated 28/10/2020 called for the report from the three Respondents, therein, i.e. (1) The P.I., Old Goa Police Station, (2) The Health Officer, PHC, Chimbél and (3) The Asstt. Engineer, Sub Div.-III, PWD, St. Inez, Panaji.

13. The Respondent No.3 filed their reply dated 26/11/2020. So also the Respondent No.2 filed their reply on 02/12/2020 and the Respondent No.1 filed their reply on 11/01/2021.

14. Thereafter, the Complainant filed his Rejoinder on 15/02/2021. The Respondent No.4 also filed his reply dated 19/08/2021.

15. The Commission heard the Complainant and Respondent No.1 in person and also heard Shri Atul Ghate, Assistant Engineer on behalf of Respondent No.4.

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16. The Complaint dated 02/11/2020 was received from the Complainant, Shri Sanjay Kumar Puthal, for dis-connection of the PWD water supply in their building Mudras Mansion.

17. On perusing the complaint, the Commission by Order dated 19/11/2020 called for the report from the two Respondents therein, i.e. (1) The Assistant Engineer, W.D.-III (PHEN) and (2) The P.I., Old Goa Police Station.

18. The Respondent No.1 filed their reply dated 04/12/2020.

19. At the stage of arguments, the Complainant herein was heard in person. Shri Uttam Shetye, Assistant Engineer for Respondent No.1 and P.I. Shri Krishna Sinari were heard on behalf of Respondent No.2.

20. The Commission has gone through the complaints, the replies of the Respondents, documents of the parties and submissions on behalf of the parties in each of the 4 complaints.

21. There was a common water connection to the building which had been obtained in the name of the owner of the plot, Shri Mukundraj Mudras in the year 2018.

22. The Mudras building consists of 8 flats and the PWD had released the water connection on 23/01/2018 based on the application dated 30/10/2017 and the documents produced by Shri Mukundraj Mudras.

23. The said water connection was dis-connected based on his written request and after following the due process, as Mukundraj Mudras had not paid the arrears of the bill of Rs.11,625/-. The PWD has already initiated action before the Mamlatdar of Tiswadi for recovery of the arrears against Shri Mukundraj Mudras.

24. So also, CA No.60006722825 (common utility) connection was availed by Shri Mukundraj Mudras on 23/03/2018. He applied for temporary disconnection on 12/03/2020 along the reason that all the co-occupants of the building are not contributing towards the units consumed for the common utility, such as staircase, lighting and pumping of water. The Electricity Department placed the meter under temporary disconnection vide Notification dated 18/03/2020. The outstanding bill of Rs.233/- was paid on 26/03/2020.

25. In ***Dr. Winston Dias vs State of Goa through Chief Secretary and 4 Ors., in Writ Petition No.192/2008*** decided by the Division Bench of the High Court of Bombay at Goa, the Hon'ble High Court had considered the provisions contained in Chapter X-A as inserted by the Goa Public Health

(Amendment) Act, 2004 incorporating Sections 94A, 94B, 94C and 94D and the guidelines in the Office Memorandum dated 22/11/2004. In para 14 therein, it was held as under :

*“ On close scrutiny of above referred decisions and the principles laid down by the Supreme Court for observance while determining question of constitutionality of any provision, we are of the opinion that the provisions of Chapter X-A of the Act or the Guidelines laid down in the memorandum issued by the State cannot be said to be arbitrary or violative of provisions of Article 14 of the Constitution of India. Infact, the provisions contained in section 94A(1) and 94A(2) support the object of Article 21 of the Constitution of India. **The object of the provision is to ensure maintenance of essential services to the public at large and promote health and well being of the citizens of the State of Goa. It must be observed that providing for adequate and safe drinking water is one of the essential services for a citizen. Ensuring maintenance of essential services is necessary for promoting and protecting public health.** In the year 1981, 34th World Health Assembly in a resolution emphasized that safe drinking water is the basic element of "primary health care" which is the key to attainment of "Health for all by the year 2000 AD". Millennium Development Goals included safe water and sanitation as the attainable goal. **Lack of essential service such as electricity and water supply leads to unhygienic condition which in turn leads to serious health hazards.** Lack of hygienic condition may lead to disease, infections, epidemics etc. It is the responsibility of the State to keep the environment safe for its citizens. Considering the object of the provisions, providing for water connection for such households which are not provided with*

water supply cannot be construed as illegal even if the structure raised is illegal. **Essential services like water and electricity supply is a must to maintain basic living condition of a human being.** The provisions of Chapter X-A are as stated above in furtherance of protecting the guarantee provided under Article 21 r/w directive principles of State Policy particularly clauses (e) and (f) of Article 39 and are also framed with due regard to covenants contained in Civil and Political Rights, 1966 as also the International Covenant of Economic & Social Rights of 1966 which proclaims the inherent dignity and the equal and inalienable rights of all Members of the Human Family as foundation of Justice and Peace of the world. Hence the provision made for maintaining essential supplies like water and electricity which is the basic requirement of life does not in any way violate the rights of petitioner. Rights of petitioner, if any, cannot be equated as preferred as against the basic human rights of respondent or any other person. **The basic human rights of an individual will have an precedence in contrast with right of an individual in respect of property or any other such right.** It is also to be noted that in the State of Goa, the pre-liberation law Portaria No. 6802 relates to the Regulation of water supply within the State of Goa. Supply of water including installation of other items, are governed by the said Portaria”.

26. In the above Judgment, reference is made to the case of **Commander Sureshwar D. Sinha and others vs Union of India and others, 2001(3) Scale 533**, wherein the Apex Court has observed that there can be no denying the fact that right to life guaranteed under Article 21 of the Constitution would surely include a right to clean water.

27. Section 94 A(1) empowers the Government to issue directions to any authorities, local bodies, statutory functionaries or any other functionaries discharging public functions, for the purposes of clauses (a) and (b) of said sub-section 25 (1) of Section 94 A .

28. The provisions of Chapter X-A of the Act are quoted as below :

CHAPTER XA

“ Supply of potable water, electricity and other essential services 94A. Power of Government to issue directions (1) Notwithstanding anything contained in any provisions of this Act, or in any rules, regulations, notifications, orders or in any decree or judgment of any Court, or in any law for the time being in force, **the Government may, in appropriate cases**, by order, direct any authorities, local bodies, statutory functionaries, or any other functionaries discharging public functions, - (a) **to grant, supply, provide and ensure supply of potable water, electricity**, or such other essential services, so declared by the Government under the Goa Essential Services Maintenance Act, 1988 (Act 20 of 1989) or under any other law for the time being in force, to any person, house, structure, hut, factory, area, locality; (2) The Government may empower any of the following authorities, by a special or general order, to perform its functions under sub-section (1), namely:- (a) Health Officer of the concerned area; (b) Chief Officer of a Municipal

Council or the Commissioner of a Corporation, as the case may be; (c) Director of Health Services; (d) Collector of the District; (e) Secretary to the Government, dealing with Public Health Department. (3) Upon the issuance of an order under sub-section (1) or sub-section (2) by the Government, every authority, local body, statutory functionary or other functionaries and every person thereof referred to in sub-section (1) or sub-section (2), shall be bound to comply with the same and provide and facilitate the provision of potable water electricity or any other essential services, as the case may be, and for this purpose, every authority, local body, statutory functionaries or other functionaries and every person thereof, referred to in sub-section (1) or sub-section (2), shall have all powers to lay necessary lines, cables, pipes, poles, pipelines and to provide necessary infrastructure, subject to the provisions of sub-section (4) hereof:.....”

29. The Government of Goa issued Guidelines/procedure for the purpose of Chapter X-A of Goa, Daman and Diu Public Health Act, 1985 on 22.11.2004 as quoted below :

“(1) An application requesting to discharge functions as specified in clauses (a) and (b) of sub-section (1) of section 94 A of the said Act shall be made by the applicant to the authorities/functionaries specified in sub-section (1) of Section 94A of the said Act or to the

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authorities empowered by the Government in terms of sub-section (2) of section 94A of the said Act vide Order No. 13/144/87-I/PHD (Part- II) dated 25th June, 2004, published in the Official Gazette, Series II No. 13, dated 25/6/2004 (Extraordinary). (2) The requirement of production of No Objection Certificate from Municipal Corporation of Municipal Council or Village Panchayat, for obtaining water connection or electricity connection or sewage connection, shall be waived, as the purpose of granting such connections is only the maintenance and improvement of public health i.e. purely from the angle of public health. (3) The concerned authority shall examine the applications and shall satisfy itself if necessary, by site inspection, that the water/power/sewage connection, as the case may be, is required purely from the angle of public health and pass such orders as deemed necessary in terms of section 94 A of the said Act. (4) The Chief Officers of the Municipal Councils and the Commissioner, Corporation of the City of Panaji, shall exercise their powers under the said Act, within their respective jurisdictions. The Health Officers shall exercise their powers under the said Act within their respective areas, outside the jurisdiction of Municipal Councils or Municipal Corporation. (5) If the Chief Officer of the Municipal Council or the Commissioner, Corporation of the City of Panaji or the Health Officer does not act as may be required under the said Act or there is a delay in granting water/power/sewage connection, a request for such connection shall be made to the respective Collector of the District who shall exercise his powers under the said Act. (6) **The authorities empowered under the said Act vide said Order No. 13/144/87-I/PHD (Part-II) dated 25th June, 2004 can also initiate action suo-motu with regards to matters affecting public health and issue directions to any person or body to comply with such directions within time specified in the order.** (7) An application made shall be accompanied by an Affidavit/Undertaking stating that,- (a) the applicant is the occupant of the premises, and (b) the applicant shall bear all the cost of the connections, etc. and (c) the grant of

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water/electricity/sewage connection being purely from the angle of health, the applicant will not claim any right including right of possession, ownership etc. and that the applicant shall not use the fact of having water/electricity/sewage connection under the provisions of this Act against the Government or the owner of house/land in any proceedings whatsoever”.

30. Guided by the above provisions and the referred Judgments and in the facts of the present case, where the occupants of the building are presently deprived of the potable water supply and also of the electricity supply for the meter of common facilities affecting their health, the Commission finds that in the interest of public health and to protect their human rights, it is necessary to issue the recommendation under Section 18(a) of the Protection of Human Rights Act, 1993 as under :

“In the facts of the present case, the Commission recommends that, under Section 94A of the Goa Public Health Amendment Act, 2004, on the application of the Complainant, Shri Paresh Vasant Salgaonkar, in the Proceeding No.225/2020, who shall file the application within seven days from today, in accordance with the guidelines dated 22/11/2004, the Respondent No.2 therein, i.e., the Health Officer, Primary Health Centre, Chimbel in exercise of the powers vested in him/her under Section 94A(i) of the said Act, may consider the grant of the supply of potable water and electricity to the residents of the flats in the Mudras Mansion at St. Cruz, on payment of the appropriate fees and on the said Applicant undertaking to continue to pay the bills from time to time, failing which the PWD and the Electricity Department will be free to disconnect the supply”.

31. Under Section 18(e) of the Protection of Human Rights Act, 1993, the Commission shall send a copy of the Inquiry Report together with its recommendations to the Respondent

and the Respondent shall within a period of one month or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon to the Commission.

32. Copy of the Inquiry Report be sent to the Respondent No. 2 in Proceeding No.225/2020, i.e. The Health Officer, Primary Health Centre, Chimbel, calling for his comments, including the action taken or proposed to be taken within a period of two months or on or before 29/11/2021, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

Date : 28/09/2021

Place : Panaji-Goa.

Sd/-
(Justice U.V. Bakre)
Chairperson
Goa Human Rights Commission

Sd/-
(Desmond D'Costa)
Member
Goa Human Rights Commission