

**GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA**

**ANNUAL REPORT
2021 – 2022**

Introduction

This is the eleventh Annual Report of the Goa Human Rights Commission for the year 2021-2022 (1st April 2021-31st March 2022), presented to the State Government, in terms of Section 28 (1) of the Protection of Human Rights Act, 1993.

2. The Protection of Human Rights Act, 1993 provides for the constitution of National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and the matters connected therewith or incidental thereto.

3. As per Section 2 (1) (d), “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India. The Constitution of India has also guaranteed a right to life to all persons under Article 21. This right has been given a new dimension by the Court in the last three decades by interpreting the right to life in a liberal way. It has been held in catena of cases that the right to life includes the right to live with dignity and decency and also in a clean and healthy environment. Thus, any infringement of fundamental right also amounts to violation of human rights.

4. This Commission has made several recommendations from time to time in respect of the violation of basic human rights such as delay in payment of pension to the Government servants, delay in payment of salaries to the government servants, police atrocities against public members, illegal detentions of the persons by the Police allegedly involved in commission of crimes, blocking of right of access of the persons to reach their respective properties, etc. These recommendations were widely reported by press which made public members aware about their fundamental rights and also about the basic human rights which are available to them under the law. In absence of State Human Rights Commission in the State of Goa, the persons whose human rights were allegedly violated by the public functionaries were constrained to approach before the normal court of law which involves long and cumbersome procedure apart from being a costly affair. The establishment of Goa Human Rights Commission has fulfilled the aspirations

of the people of Goa who, now, have an easy access to justice to ventilate their grievances against public servants in the matter of violation of human rights.

5. The Government of Goa has allotted adequate office premises to the Commission consisting of 609.39 sq.mts in the Old Education Department Building at Panaji and has also provided adequate infrastructure for smooth functioning of the Commission.

Constitution of Commission

The Goa Human Rights Commission was constituted in the month of March, 2011 to exercise the powers conferred upon and to perform the functions assigned to the State Commission under Chapter IV of The Protection of Human Rights Act, 1993. Section 21 (2) of the said Act as substituted by Protection of Human Rights (Amendment) Act, 2019, lays down that the State Human Rights Commission shall consist of

- (a) A Chairperson who has been a Chief Justice or a Judge of a High Court.
- (b) One Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years' experience as District Judge.
- (c) One Member to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The Constitution of the Commission during the period of this Annual Report was as under:

- (i) Justice Shri Utkarsh V. Bakre, Chairperson (Retired Judge of the High Court of Bombay).
- (ii) Shri Desmond D'Costa, Member (Retired Principal District and Sessions Court Judge of the State of Goa).
- (iii) Shri Pramod V. Kamat, Member (Former District and Additional Sessions Judge and former Law Secretary of the State of Goa).

Section 27 of the said Act mandates that the Government shall make available an Officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission and such Police and Investigative Staff under an Officer not below the rank of Inspector

General of Police and such other Officers and Staff as may be necessary for efficient performance of the functions of the State Commission. A Police Officer of the rank of Inspector General of Police has not been provided by the State Government to this Commission so far, as there are no sufficient number of Police Officers of the rank of Inspector General of Police within the police force. Presently, an Officer of the rank of Police Inspector is functioning as head of the Police Investigation Team.

6. **Functions of State Commission**

Section-12 read with Section 29 of The Protection of Human Rights Act, 1993 provides for the functions of the State Human Rights Commission which inter alia includes the following functions:-

- (a) To inquire, suo motu or on a petition presented to it by the victim or any person on its behalf or on a direction or order of any Court, into the complaint of:
 - (i) Violation of human rights or abetment thereof; or*
 - (ii) Negligence in the prevention of such violation, by a public servant;**
- (b) To intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;*
- (c) To visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of living conditions of inmates thereof and make recommendations thereon to the Government;*
- (d) To review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;*
- (e) To review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;*
- (f) To undertake and promote research in the field of human rights.*

- (g) To spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means;*
- (h) To encourage the efforts of non-governmental organisations and institutions working in the field of human rights;*
- (i) To such other functions as it may consider necessary for the promotion of human rights.*

7. Procedure adopted by the State Commission

The Goa Human Rights Commission has notified its own Regulation namely, the Goa Human Rights Commission (Procedure) Regulations, 2011, which is published under Section 10 and Section 29 of The Protection of Human Rights Act, 1993. One of the most important functions of the State Commission is to inquire suo motu or on a petition presented to it by the victim into the complaint of violation of human rights by a public servant. The State Commission has devised a simple procedure for receiving and dealing with complaints. A complaint can be filed either in person or through post or via e-mail. The State Commission does not charge any fee from the people for filing complaints.

Under Section 18 of the Protection of Human Rights Act 1993, provides the steps that the Commission can take under the Act, when the inquiry discloses the Commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant and the powers of the Commission to recommend to the concerned Government authority, the steps as provided in Section 18 (a) (i) or 18 (a) (ii) or to take further action as deemed fit, in terms of Section 18(a)(iii).

Under Section 18(e) of the Act, the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority 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.

Under Clause 17 of the Goa Human Rights Commission (Procedure) Regulation 2011, a copy of the inquiry report along with the copy of recommendation shall be sent to the authority calling upon them to furnish their comments on the report including action taken or proposed to be taken within one month from the date of receipt of the Order or recommendation made by the Commission.

8. Powers of the Commission

The State Commission, while inquiring into the complaints under the Act, have powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely:

- (a) Summoning and enforcing the attendance of witnesses and examining them on oath;*
- (b) Discovery and production of any document;*
- (c) Receiving evidence on affidavits;*
- (d) Requisitioning any public record or copy thereof from any court or office;*
- (e) Issuing commissions for the examinations of witnesses or documents;*
- (f) Any other matter which may be prescribed.*

9. Complaints not ordinarily entertainable.

As per Regulation 9 of the Goa Human Rights Commission (Procedure), Regulations, 2011, the Commission may not entertain complaints:-

- (a) which are vague or anonymous or pseudonymous or trivial in or frivolous in nature;*
- (b) which are pending before any other Commission;*
- (c) which raise dispute of civil nature, such as property rights or contractual obligations;*
- (d) which relate to service matters or industrial disputes;*
- (e) which are not against any public servant;*
- (f) which do not make out any specific violation of human rights;*
- (g) which are covered by a judicial verdict or decision of the Commission;*
- (h) which are outside the purview of the Commission.*

10. Grants by State Government

As per Section 33 of The Protection of Human Rights Act, 1993, the State Government shall pay to the State Commission by way of grants such sums of money and the State Commission may spend such sums as it thinks fit for performing the functions under Chapter V. However, the Goa Human Rights Commission preferred to seek the provision in the Budget and powers are vested in the Secretary to the Commission who has also been delegated with powers of Head of Department to incur the expenditure on the affairs of

the Commission and all the expenditure incurred are being pre-audited by the Directorate of Accounts. This arrangement was preferred by the Commission at par with the Goa Public Service Commission. During this period a Budget provision of 406.85 lakhs (Rupees four hundred six lakhs and eighty five thousand only) was made. The Commission spent an amount of Rs. 322.54 lakhs (Rupees three hundred twenty two lakhs and fifty four thousand only).

The Commission is also required to prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with Comptroller and Auditor General of India. However, as stated earlier, all the expenditure made, by the Commission is out of the provision in the Budget Estimates of 2021-2022, and pre-audited by the Directorate of Accounts.

Hence, it is not necessary to prepare its Annual Statement of Accounts and submit the same to the State Government as per provisions in The Protection of Human Rights Act, 1993.

11. During the period of 01/04/2021 to 31/03/2022, 225 complaints were registered and 221 cases were disposed of.

12. Amongst the cases disposed of between 01/04/2021 to 31/03/2022, the following are twelve cases in which recommendations were made:-

1) Proceeding No.269/2018

This case had been disposed of by Inquiry Report dated 03/08/2021.

An email from the Complainant, Shri Prakash Kundaikar, was inwards in this Commission on 11/12/2018, in respect of the odd practice followed by the authorities incharge of issue of disability or other related certificate to persons with Disability, by demanding the full body photograph.

By Order dated 12/12/2018, on perusing the complaint, dated 09/12/2018, the Commission called for the report from the Respondents No.1 & 2.

The Respondent No.1, the Dean, Goa Medical College, Bambolim, filed their report dated 01/01/2019 along with the Note of Respondent No.2, i.e. Medical Superintendent, Goa Medical College, Bambolim, dated 13/12/2018 and with the letter of the Chairman of the Medical Board dated 18/12/2018.

Subsequently, on the application of Respondent No.3, Shri Vishant S. Nagvekar, received by email on 18/01/2019, he was allowed to intervene. So also Respondent No.4, Shri Avelino De Sa, President, Disability Rights

Association of Goa, was added as Respondent No.4 on 07/03/2019, based on his application before this Commission.

At the stage of hearing, the Commission heard the Complainant and Respondent No.4 in person. The respondents No.1, 2 & 3 remained absent.

The Commission had gone through the complaint and the replies of the Respondents and the documents produced as well as the law on the subject.

The Commission finds that the complaint was filed as the authorities were demanding, from the persons with disabilities, full body photographs in 4x6” or 3x4”, for issue of disability certificates.

The Complainant has prayed that only passport size photographs showing the face only, be accepted for protecting the dignity of the persons with disabilities.

From the replies of the Respondents, it is seen that the Medical Superintendent of Goa Medical College, Bambolim had issued Note dated 31/12/2018 directing all the concerned Doctors in the Department of Orthopedic not to insist on full body photographs and to follow the new guidelines.

So also by letter dated 18/02/2018, the Chairman of the Medical Board of Goa Medical College had informed the Dean that no personnel has asked for or insisted for full body photograph for patients of disability.

The Complainant had filed a Rejoinder on 06/02/2019 stating that the Respondents are still compelling persons with disability to submit full body photographs to obtain railway concession certificate.

The Complainant has produced with his Rejoinder a copy of a disability certificate showing the full body photograph in use.

The Respondent No.3 has also produced a Disability Certificate dated 16/03/2017 issued to him having his full photo. This shows that full body photographs are taken which goes against the provisions of the Act, thereby violating the human rights of the persons with disability.

So also, the Respondent No.4 in his reply, had stated that there are many persons with disability in Goa, including him, who have been issued Disability Certificates, exposing their affected body parts, copies of which were annexed.

The Commission found that under the “The Rights of Persons with Disabilities Act, 2016, Section 58 contains the procedure regarding issuance of the disability certificate. The full body photograph which was mandatory earlier stands replaced with “ Two recent passport size photographs”, as per Rule 17(2)(b) of the Rights of Persons with Disabilities Rules, 2017. These Rules were published in the Official Gazette dated 15th June, 2017, of the Central Government and extend to the whole of India, including Goa. A passport size photograph is a small photograph of a person’s face, of the type

used on passports, i.e. of size 2 x 2 inches or 51 mm x 51 mm.

The Commission held that the Rule 17(2)(b) of The Rights of Persons with Disabilities Rules, 2017 are not followed and non adherence of the same amounts to violation of human rights and privacy of the person/s thereof.

Hence, the Commission issued the recommendation as under :

“The Respondents No. 1 & 2 shall ensure that Disability Certificates/other necessary certificates of persons with disabilities, are issued, only by accepting passport size photographs, showing only the face of the Applicant and not the full body photograph, in accordance with the Rights of Persons with Disabilities Act, 2016 and the Rights of Persons with Disabilities Rules, 2017”.

2) Proceeding No.235/2018

This proceeding was disposed of by Inquiry Report dated 24/08/2021.

The Complaint dated 29/10/2018 was received in this Commission as the Complainant, Shri Krishnanath Pandurang Harmalkar, had not received his pension arrears from January 2016 to August 2017.

On perusing the complaint, the Commission by Order dated 08/11/2018 called for the report from the Respondent, i.e. the Chief Officer, Mormugao Municipal Council.

The Respondent filed the report dated 07/12/2018 stating that due to paucity of funds, the pension arrears under Seventh Pay could not be disbursed and final calculation is already prepared and approved by the Chief officer and Chairperson and the arrears will be paid in due course of time after generating the funds.

The Respondent had prayed for 3 months time to disburse the entire arrears of pension to the Complainant, the ex-employee of the Council.

Thereafter, the Complainant filed his Rejoinder dated 07/03/2019 that he had still not received the pension arrears of Rs.60,000/- for the period from January 2016 to August 2017.

Ld. Advocate Shri V. Pednekar, on behalf of the Respondent had sought time for filing compliance report but no such report was filed.

At the stage of hearing, the Complainant was heard and none remained present for the Respondent.

On perusing the reply of the Respondent alongwith the documents of both parties, the Commission found that there is no dispute that the Respondent had not paid the Seventh Pay arrears of Rs.60,000/- of the

Complainant, the ex-employee of the Municipality, for the period from January 2016 to August 2017.

The Commission had noted that, in the reply dated 07/12/2018 before this Commission, the Respondent had undertaken and requested for 3 months time to disburse the entire arrears of the Complainant, i.e. they had sought time till the end of March 2019. More than 2 years had passed but the arrears had still not been paid to the Complainant.

The Commission found that the delay in payment of the arrears of pension to the Complainant, had caused a serious violation of his human rights.

The Commission, accordingly recommended as under:

The Respondent shall forthwith pay the arrears of pension of Rs.60,000/- (Rupees Sixty Thousand only) of the Complainant for the period from January 2016 to August 2017, within 30 days from today alongwith simple interest thereon at 6% per annum from 01/09/2017 till final payment.

Comments/Action Taken Report were called for from the Respondent.

The Compliance Report was received from the Respondent. The Inquiry Report along with Compliance report were forwarded for publication in the Government Gazette in terms of Section 18(f) of the Protection of Human Rights Act, 1993.

3) Proceeding No.06/2021

This case had been disposed of by Inquiry Report dated 30/08/2021.

The Complaint dated 06/01/2021 was received in this Commission from the Complainant, Shri Ajit V. Naik, in respect of non-payment of his pension and retiral dues.

It is his case that he retired on superannuation as an Awal Karkun, from the Office of Collector, North Goa w.e.f. 31/01/2020 and yet after over 11 months, he has not been paid his retiral benefits.

On perusing the complaint, the Commission by Order dated 13/01/2021, called for the report from the Respondents.

The Respondent No.1, the Collector of North Goa District, filed their reply on 06/02/2021. They stated that the pension case papers of the Complainant had been submitted to the Respondent No.2, the Director, Directorate of Accounts, Panaji by letter dated 25/09/2019 but were returned by the Respondent No.1 on 07/01/2020 with observations.

They stated that the pay of the Complainant was revised as per the Seventh CPC w.e.f. 01/01/2006 and due to lock down of Covid 19

w.e.f.23/03/2020, the pay fixation was submitted to Respondent No.2 by letter dated 29/05/2020 for approval.

The Respondent No.2 again raised observations and the Respondent No.1 immediately revised the pay fixation statement by letter dated 06/10/2020 and they requested the Respondent No.2 to settle the revised pay on priority basis.

The Respondent No.1 further stated that the Respondent No.2 revised the pay fixation on 11/01/2021 and on the same day, the Order sanctioning encashment of 300 days was issued by the Respondent No.1 and was submitted to the Directorate of Accounts and the GPF bill of the Complainant was cleared on 20/01/2021.

The Respondent No.2, the Director, Directorate of Accounts filed their reply on 24/02/2021, stating that the pension case of the Complainant had been forwarded by the Respondent No.1 on 25/09/2019 and had been received by the Respondent No.2 on 27/09/2019. They stated that the pension case was returned back to Respondent No.1 on 07/01/2020 seeking necessary clarification and compliance from the Respondent No.1.

The Respondent No.2 further stated that the pension case was re-submitted on 04/02/2021 and the same has been authorized for payment of pension, and pensionary benefits by letter dated 23/02/2021 and PPO No.Goa-A/28024.

In respect of the release of provident fund amount, the Respondent No.2 stated that GPF final payment application dated 3/08/2020 was received on 14/08/2020 and was returned for observations by letter dated 21/09/2020.

The Respondent No.2 states that the GPF application was re-submitted by the Respondent No.1 by letter dated 06/11/2020. The Respondent No.2 states that the final payment bill was passed by the Respondent No.2 on 20/01/2021. They stated that the delay in finalization and settlement of retirement benefits to the Complainant was not caused by the Respondent No.2 and prayed that the proceedings be dropped.

During the course of proceedings, the Respondent No.1 filed further letter dated 24/02/2021, stating that the pension case of the Complainant has been settled by the Respondent No.2 on 23/02/2021.

Subsequently, the Complainant filed his further application dated 15/03/2021 before this Commission, stating that his pension case remained to be settled fully as no interest and compensation is paid and also raised grievance that an amount of Rs.1,41,468/- termed as amount overpaid has been deducted from the retirement gratuity without any notice to him thereby preventing him from praying for waiving the same, in accordance with the rulings of the Hon'ble Supreme Court and

the Office Memorandum dated 08/07/2008. At that stage, the Respondent No.3 was added, but have not filed any reply.

On the copy of above application being served on the Respondents, the Respondent No.1 filed their report on 16/04/2021. They stated that the Office of the Respondent No.1 was designated as the District Disaster Management Authority to Control the ongoing Covid 19 pandemic and the officials were drafted for various tasks, as per the guidelines issued by the Government and they could complete the observations raised by the Directorate of Accounts, as and when possible. They stated that the queries raised by the Respondent No.2 were further complied by the dealing hand visiting personally, as time permitted and the delay of settlement of the pension was unintentional.

In respect of the recovery due to extra increment which was granted to the Complainant in the year 1999, they stated that the Complainant may make an application for reimbursement of recoveries deducted from his gratuity which will then be processed in terms of Office Memorandum No.18/03/2015-Estt.(Pay-I) dated 02/03/2016, issued by the Department of Personnel & Training, Government of India.

Thereupon, the Complainant filed his application dated 01/07/2021, stating that his pension for the period from February 2020 till April 2021 has been credited to his Savings Bank Account at SBI, Mapusa Branch and now is regularly paid in his account.

He reiterated that no notice was given to him for waiving the deduction of overpaid amount of Rs.1,41,468/-. He also stated that the reasons given for delay are not attributed to him and he claimed interest on the delayed payments.

To the said application, the Respondent No.2 has filed their reply dated 03/08/2021. They stated that due care is taken by the Respondent No.2 to settle pension cases in time and the pension case was resubmitted after a period of more than one year by the Respondent No.1.

In respect of the deduction of the overpaid amount of Rs.1,41,468/-, they stated that this was sanctioned by the Respondent No.1 in terms of Rule 71(2) and Rule 71(3)(b of CCS (Pension)) Rules, 1972.

In respect of the claim of the Complainant for waiving of the recoveries of overpayment of pay and allowances, they stated that the waiver is to be initiated by the Respondent No.1. In respect of the interest claimed by the Complainant on the GPF amount, the Respondent No.2 states that the interest is payable up to the period of six months after superannuation and as the Complainant retired on 31/01/2020, he is eligible for interest upto

August 2020, which has been already paid to him in the GPF final payment bill.

The Commission heard the Complainant in person and also heard Shri Swapnil Palini, LDC on behalf of the Respondent No.1 and Ms. Siddha Kuttikar, Accountant, on behalf of the Respondent No.2. None remained present for the Respondent No.3.

The Commission found that the delay on the part of the Respondent No.1, in processing the pension papers, was not intentional and due to the added responsibilities as the Respondent No.1, since March 2020, has been functioning as the District Disaster Management Authority, for control of the ongoing Covid 19 pandemic. As such, the Commission did not deem it necessary to award interest on the delayed payment of the pension.

The Commission found that there was no deliberate delay on part of Respondent No.1 in submitting the pension case after clearing the clarifications sought by Respondent No.2. So also, from the table submitted by Respondent No.2, of the "Date of receipt of the Claims" and "Date of payment", the Commission also found that there was no delay on part of Respondent No.2.

However, in respect of the deduction of Rs.1,41,468/- from the gratuity amount, the Commission found that the Respondent No.1 had not given any notice to the Complainant before the deduction and deprived him of an opportunity to make his representation thereon, thus violating his human rights.

Accordingly, the Commission disposed of the proceedings as under :

(a) The Complainant is given liberty to make an application to the Respondent No.1 for reimbursement of the amount of Rs.1,41,468/- recovered from his gratuity amount, on grounds deemed fit, within 15 days from the date of the receipt of this Order.

(b) The Commission recommends that upon receipt of the said application, the Respondent No.1 consider the same, in terms of the Office Memorandum No.18/03/2015-Estt.(Pay-I) dated 02/03/2016, issued by the Department of Personnel & Training, Government of India and transcribed and adopted by the Government of Goa by Office Memorandum No.8/7/2008 Fin(R&C), dated 07/03/2017.

On the Action Taken Report, being called from the Respondent No.1, the same was received and the Inquiry Report along with Action Taken Report were forwarded to be published in the Government Gazette.

4) Proceeding No.140/2019

This proceeding was disposed of by Inquiry Report dated 21/09/2021.

The Complaint dated 04/06/2019, was received in the Commission in respect of non-payment of the Complainant's balance G.P.F. amount along with interest by the Respondent No. 1.

On perusing the Complaint of Ms. Vidhya P. Pai Kane, the Commission by Order dated 07/06/2019, called for the report from the two Respondents.

The Respondent No. 1 i.e. the Manager, Cuncolim United High School, Cuncolim Educational Society, Cuncolim, Salcete-Goa, filed their report dated 08/07/2019. The Respondent No. 1 had not denied that an amount of Rs. 2,50,610/- is balance to be paid to the Complainant, towards her G.P.F. The Respondent No. 1 stated that some records were not traceable and that vide letter, reference no. CUHS/2016-17/548 dated 13/01/2017, they wrote to the Dy. Director of Education, South Education Zone, Margao that the records of MPS High School were available in the office of the Dy. Director of Education, South Education Zone, Margao, and that the same were required for resolving the G.P.F. case of the Complainant. The Respondent No. 2, i.e. the Director of Education, Directorate of Education, Porvorim-Goa, however, has not filed any reply, denying the above statement of the Respondent No. 1 or denying the case of the Complainant.

The Complainant has filed a detail rejoinder to the reply of the Respondent No. 1, thereby denying the averments which are not consistent to her case and reiterating the facts stated in the Complaint.

At the stage of arguments, the Complainant and her representative, Shri Motiram Pai Angle, were heard. None were present for the Respondents.

The Commission has perused the Complaint and her documents as well as the Reply of Respondent No. 1 and their documents and the Rejoinder filed by the Complainant on 19/03/2020.

The Complainant stated that though the balance of her G.P.F. account on the date of her retirement as a teacher in the school of Respondent No. 1 in August 2016, was Rs.16,01,208/-, she has been paid only Rs. 13,50,598/- on 17/10/2019 and the amount of Rs. 2,50,610/- is still due to her.

The Complainant has reiterated in her Rejoinder that she has made efforts to get the remaining amount of her G.P.F., but the same was not paid to her.

It was seen that in the copy of the page from the General Provident Fund Register, for the year 2016-17, produced by the Complainant, the balance of G.P.F. as on 31/12/2016 in respect of the Complainant was indicated as Rs.16,01,208/-. But this was subsequently cancelled by putting cross lines. There is no signature of any authority or stamp of the school under this cancellation. There is also no explanation about this document in the reply filed by the Respondent No. 1.

The Commission finds, from the letter dated 17/10/2017, of the Directorate of Education which is annexed to the Complaint, that the Joint Director of Accounts of the Directorate of Education had granted sanction of the Director of Education, Porvorim to the Assistant Accounts Officer, South Education Zone, Margao-Goa, in respect of the final payment of G.P.F. balance of the Complainant. As per the said letter, the sanction was conveyed for drawing of a sum of Rs.13,50,597/- (Rupees Thirteen lakhs fifty thousand five hundred ninety seven only), representing the entire G.P.F. deposit benefit residuary balance with interest calculated up to 12/2016, the maximum admissible as per rules. The school authorities were directed to disburse the said amount in terms of Rule 34 of the G.P.F. (C. S.) Rules.

The undisputed fact remains that the Respondent No. 2, way back on 23/07/2012, based on the records, arrived at a conclusion that as on 04/12/2012, the Complainant had the balance amount of Rs.16,65,933/- towards her G.P.F.. As per the records, an amount of Rs.13,50,598/- admittedly was paid to the Complainant, which has been accepted by her under protest. It is strange that the custodian of records (documents) are seeking records (documents) from the employee. In fact, the order dated 04/12/1997, of the Respondent No. 2, regarding the absorption of the Complainant from M.P.S. High School, Murida, Cuncolim, Goa to the Respondent No. 1-school, reveals that on receipt of intimation from the absorbed school, the Management of the relieving school, had to, within outer time limit of 10 days, forward the service book and leave account duly complied in all respects and the last pay certificate of the employee to his/her school of absorption and also had to forward any other records as may be called for by the absorbed school. It has been specifically mentioned in the above order that any lapses in compliance to the above instructions will attract serious action against the erring school.

We are of the opinion that the G.P.F. of the Complainant cannot be withheld on the ground that G.P.F. ledger maintained by the Respondents are not available due to the closure of MPS High School. More so, it was

compulsory for all the Teachers to submit the option form as per the Act and as per the instructions given by the Department of Education at the time of surplus transfer dated 04/12/1997 and for which, infact the Respondent No.1 is liable being in custody of the documents. The non-availability of original past records of Mrs. Vidhya P. Pai Kane from the MPS High School is not a ground to deny the legitimate dues of the Complainant when it is the duty and obligation of the Respondent No. 1 to maintain records. It is also not the case of Respondent No. 1 that the Complainant is not entitled for the said balance amount of Rs.2,50,610/- or any part thereof. There are no justifiable reasons advanced by Respondent No. 1 to deny the Complainant's justifiable dues with interest. That being the position, we are of the opinion that the Respondent No.1 is liable to pay the amount of Rs.2,50,610/- due to her with interest accrued on the said sum at six percent simple interest per annum.

In view of all the correspondence on record coupled with the silence of the Respondents, we opine that the Complainant in all was entitled for an amount of Rs.16,01,208/- as on the date of her retirement and hence the amount of Rs.2,50,610/- is due to her, with interest.

The Commission, therefore, recommended that the Respondent No.1 should effect the payment of Rs.2,50,610/- due to her along with simple interest @ 6% per annum as from 18-10-2017 till the date of final payment.

After the Inquiry Report was pronounced, letters have been sent to the Respondents, calling for their Action Taken Report and the same has not been received from the Respondent No.2, to whom a fresh letter has been issued.

5) Proceeding No.70/2020

6) Proceeding No.134/2020

7) Proceeding No.225/2020

8) Proceeding No.252/2020

These four proceedings were disposed of by the Inquiry Report dated 28/09/2021.

These 4 complaints were disposed of by a Common Report, as each Complainant/s is residing in a separate Flat 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.

Proceeding No.70/2020

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

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.

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

Proceeding No.134/2020

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.

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.

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.

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

Proceeding No.225/2020

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.

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.

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.

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

Proceeding No.252/2020

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.

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.

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

In each of the proceedings, the Commission heard the Complainant and the Respondents.

The Commission had 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.

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.

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.

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 had already initiated action before the Mamlatdar of Tiswadi for recovery of the arrears against Shri Mukundraj Mudras.

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, for 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.

Guided by the provisions of law and Judgments of the Supreme Court and of the Bombay High Court 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 found that in the interest of public health and to protect their human rights, it was 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”.

Copy of the Inquiry Report was 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.

On the Action Taken Report, being received from the Respondent No.2 in Proceeding No.225/2020, the Inquiry Report along with Action Taken Report were forwarded to be published in the Government Gazette.

9) Proceeding No.104/2020

This proceeding was disposed of by Inquiry Report dated 06/10/2021.

On going through the Newspaper Report which appeared in the local daily “Gomantak Times” dated 25/05/2020 under the caption “ITI Instructors cry for revised pay scales”, the Commission, by Order dated 26/05/2020 took Suo Motu cognizance of the Newspaper Report and called for the detailed report from the Respondent No.1, i.e. the Director, Directorate of Skill Development and Entrepreneurship, Government of Goa, Patto, Panaji-Goa.

The Respondent No.1 filed their detailed reply on 28/07/2020. They stated that in the year 2016, the Vocational Instructors, who were drawing Rs.4200 Grade Pay and working in various Government ITIs, represented to the office to grant them Rs.4600/- Grade Pay as per the MSD&E guidelines. The proposal was moved to the Finance Department on 26/10/2016 but was turned down by the Finance Minister/C.M.

The Respondent No.1 also stated that they received the representation from one Vocational Instructor on 26/04/2017 and the file remained pending in the cupboard of Office Superintendent but the file has now been traced out.

The Respondent No.1 stated that the Department made all the efforts to give justice to the Vocational Instructors in granting them Rs.4600/- Grade Pay as per MSD&E guidelines but the proposal was not approved by the Higher Authorities as there was no financial assistance from the Central Government and the implementation cannot be carried out.

On considering the reply, this Commission passed the Order on 06/08/2020, which is recorded in the Proceeding Sheet and which is as under :

“In this case, newspaper report reveals that Naresh Talkatkar, a vocational instructor had made a representation to the Principal of Government ITI regarding revision of pay band i.e. 9300-34800+4600 to all instructors as per the notification of Ministry of Labour and Employment (DGET), New Delhi and that Government has not implemented the pay scales and pay grade of all the vocational instructors since the issue of notification dated November 27, 2014.

In this regard, the Finance Department opined as under:-

That similar case of vocational instructors of Directorate of Skill Development and Entrepreneurship were drawing grade pay of Rs.4200 and submitted their representation for grant of grade pay of Rs.4600 as per MSD&E guidelines. The same was referred to the Government for consideration. However, Finance Department returned the proposal stating that “at present, it is not admissible to upgrade any pay scales, specially when there is no financial assistance from Govt. of India” (Pg. 5/N) and therefore, representation of Shri Zambaulikar for grade pay of Rs.4600 to vocational instructors was rejected on the ground that specially there is no financial assistance from the Central Government and that circumstances based on the observation have not been changed.

That being the policy of the Government, no human rights issue is involved.

However, it is seen that the order of the Finance Department is of the year 2016/2017 (pg. 4/N and 7/N) and however, records do not show what has happened to the representation of Shri Naresh Talkatkar stated to have been made to the Principal of Government

ITI, Panaji, seeking implementation of notification dated 27/11/2014 (see newspaper report).

Records show that no steps have been taken by Directorate of Skill Development and Entrepreneurship to the representation of Shri Naresh Talkatkar.

The file re-submitted to the Hon'ble Chief Minister on 06/09/2017, which in turn forwarded by the Secretary (SD&E) on 07/09/2017, to Personnel Department for their views, was returned back to the Department (Skill Development and Entrepreneurship) with the remark to refer the proposal to Finance Department (R&C) to seek their views for up-gradation of grade pay.

According to Department, the report prepared on 23/11/2017 was placed on 27/11/2017 before the Director with a remark, 'please speak' and that Office Superintendent did not pursue and that subsequently, Office Superintendent expired and file has been traced now.

The net result is that representation of Naresh Talkatkar is not acted upon. Apart from that, Department did not pursue the proposal prepared on 23/11/2017.

Hence, issue notice to the Respondent and to Shri Naresh Talkatkar, for hearing.

A copy of the reply filed by the Respondent be forwarded to Shri Naresh Talkatkar”.

Thereafter, the present Respondent No.2, Shri Naresh Talkatkar, ITI Instructor, Mapusa, Bardez-Goa, was added and he filed his reply along with the documents on 10/09/2020. Subsequently, on 25/03/2021, the Respondent No.1 filed his additional Affidavit-in-Reply, along with the annexures. In the said Affidavit-in-Reply, the Respondent No.1 stated that the file regarding pay scale of the Instructors was placed before him on 23/06/2020 and the Finance Department returned the said file with the remarks of the Under Secretary(Finance) as under :

“ Decision at 5/N & 8/N refers. There are no fresh grounds for considering the proposal. We may maintain the same.”

It is seen from page 27/N that the said remark was dated 15/10/2020.

The Commission heard Adv. Ms. Harsha Naik for the Respondent No.1 and also heard Shri Naresh Talatkar, ITI Instructor, i.e. the Respondent No.2.

As per the Order dated 06/08/2020 of this Commission, the Commission had noted that the representation of Respondent No.2 was not acted upon.

It is seen that Order of the Finance Department is of the year 2016-2017 dated 17/11/2016 and 23/05/2017 respectively, turning down the proposal by the Finance Minister (Chief Minister). It is admitted position that thereafter on 26/04/2017, one more representation was made to the Chief Minister, Government of Goa, by Shri Naresh Talkatkar seeking implementation of the notification dated 27/11/2014. Records show that file re-submitted to the Hon'ble Chief Minister on 06/09/2017, which in turn was forwarded by the Secretary (SD&E) on 07/09/2017 to Personnel Department for their views, was returned back to the Department of Skill Development and Entrepreneurship with the remark to refer the proposal to Finance Department (R & C) to seek their views for up-gradation of grade pay.

The point for determination is as to whether representation dated 06/09/2017 of which the report was prepared on 23/11/2017, was placed on 27/11/2017, before the Director with a remark, 'Please speak' was acted on diligently.

The averments made by Shri Dipak S. Desai, Director of Directorate of Skill Development and Entrepreneurship, Panaji-Goa are not satisfactory and are untenable. Office Superintendent Late Smt. Mahima Binghekar expired on 15/03/2019. There is considerable delay of more than one and a half year in just forwarding the file to the Finance Department, of which report was already prepared.

The Department cannot take shelter of death of Office Superintendent on 15/03/2019, in respect of forwarding representation dated 06/09/2017, very belatedly.

Even thereafter representation dated 06/09/2017, was not forwarded to the Finance Department within reasonable time and the same was filed on 16/07/2020, after this Commission has taken cognizance of the issue. There is considerable delay in forwarding the representation to the Finance Department. The reasons cited for delay cannot be countenanced. The Department did not provide for delivery of public services within the stipulated time limit and this resulted in administrative inefficiency. Maximum time limit provided by The Goa (Right of Citizens to Time-Bound Delivery of Public Services) Act, 2013, is ranging from 03 days to 15 days relating to such services. There is gross delay of almost three years. The death of Office Superintendent on 15/03/2019 cannot be the reason for not forwarding the representation earlier and thereafter after her death.

The gross and considerable delay has affected the human rights of the applicant in raising his grievances. Hence, this Commission recommended that the Respondent No.1 hold an inquiry for fixing the accountability of long

and considerable delay and to initiate action against the erring officer as deemed fit.

Copy of the Inquiry Report was sent to the Respondent No. 1 i.e. The Director, Directorate of Skill Development and Entrepreneurship, Government of Goa, Patto, Panaji-Goa, calling for their comments, including the action taken or proposed to be taken within a period of two months or on or before 07/12/2021, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

The Action Taken Report from the Respondent No. 1 was received on 07/12/2021 and the Inquiry Report along with Action Taken Report were sent for publication in the Government Gazette in terms of Section 18 (f) of the Protection of Human Rights Act, 1993.

10) Proceeding No.181/2019

This proceeding was disposed of by Inquiry Report dated 07/10/2021.

The Complaint dated 11/07/2019 was received from the Complainant, Smt. Vidya Shetkar, seeking settlement of final withdrawal of her Provident Fund.

It is the case of the Complainant that she was working as Asstt. Teacher at the Damodar English High School at Gudi Paroda and she opted for voluntary retirement in the year 2015 and submitted her application dated 25/11/2016 for final withdrawal of GPF which is not settled and her human rights have been violated.

On perusing the complaint, by Order dated 16/07/2019, the Commission called for the report from the Respondent No.1, i.e. the Chairman, Shree Damodar Education Society, Gudi-Paroda.

The Respondent No.1 filed their report dated 31/08/2019 stating that the Complainant had voluntarily resigned on 16/06/2015. In the year 2014, there were complaints regarding her bogus B. A. Degree Certificate. She opted for voluntary retirement from 16/06/2015 and was relieved from her duties.

The Respondent No.1 stated that, in the month of June, the forgery case was registered in the Quepem Police Station and the police took her service book and personal file for investigation. After receiving both the documents, they forwarded the pension papers to the South Educational Zone, Margao who refused her final GPF payment and requested to forward the papers after getting the report from the Vigilance Department.

The Complainant, then filed her Rejoinder dated 20/03/2020. She stated that she had opted for voluntary resignation. By subsequent letters, she requested the Respondent No.1 to consider her voluntary resignation as

“voluntary retirement”. She also stated that the forgery case has been disposed by the Sessions Court. She stated that she had refunded the excess payment which she received after her promotion for the period from 28/12/2010 to 16/06/2015 being an amount of Rs.45,690/-. She also stated that there is no vigilance case pending at present and to direct the Respondent No.1 and Director of Education to settle her GPF withdrawal and pension case.

Subsequently, the Complainant filed her second Rejoinder dated 20/08/2020 that she had complied with the information demanded by the Respondent No.1, for finalizing her GPF and pension case.

The Commission, by Order dated 20/08/2020 called for the report from the Director of Education, Porvorim, who was added as Respondent No.2.

On 10/12/2020, the Commission added Dy. Director of Education, South Educational Zone, Margao as Respondent No.3 and called for their report.

The Respondent No.3 filed their report dated 13/01/2021 stating that their office has received the pension case of the Complainant on 06/04/2016 and it was returned back to the School seeking details. The Respondent No.3 stated that the case was re-submitted by the School and was again returned seeking clarification.

The Respondent No.3 have further stated that the pension papers were returned and re-submitted seven times by the Respondent No.1 and lastly, on 24/11/2020, the same has been forwarded to the Directorate of Accounts, Panaji.

At the stage of final arguments, Shri Rohidas Shetkar, husband of the Complainant was heard and Respondent No.1 was absent. Shri D. Chawdikar, Dy. Director of Education (Legal) was heard on behalf of the Respondents No.2 & 3. The Complainant has relied on the Judgment of Supreme Court in support of his arguments.

In **Sudip Chandra Sarkar vs Tata Iron & Steel Co. Ltd., AR 1994 SC 1064**, the Hon’ble Supreme Court was considering a case where the plaintiff had rendered continuous service for 20 years and 8 months and he had submitted the letter of resignation which was accepted by the Respondent. On these facts, the Apex Court held as under :

“ The termination of service was thus on account of resignation of the plaintiff being accepted by the Respondent. The plaintiff has, within the meaning of the expression, thus retired from service of the Respondent and he is qualified for payment of gratuity in terms of Rule 6”.

This authority was referred to in the Judgment of the Hon'ble Supreme Court in the case of **Sheelkumar Jain vs New India Assurance Co. Ltd.**, decided by the Division Bench of the Hon'ble Supreme Court on 28/07/2011.

It was held therein that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement.

The husband of the Complainant had argued that though the Complainant had given a letter for resignation, the same has to be treated as voluntary retirement and her pensionary benefits have to be released.

The Respondent No.3 has stated that the papers of the Complainant were re-submitted by the School by letter dated 05/12/2018 for considering her case as voluntary retirement. The Respondent No.3 had then asked the School for the letter of the Complainant to consider her voluntary retirement in place of voluntary resignation and the Order from the Competent Authority accepting the voluntary retirement.

The Respondent No.3 had stated that the pension papers were again re-submitted along with the Court Orders and the School letter dated 07/01/2019 by the Respondent No.1 and subsequently, by letter dated 24/11/2020 and the same was forwarded to the Directorate of Accounts.

The letter dated 12/02/2021 of the Respondent No.1 addressed to the Respondent No.3 indicates that the Respondent No.1 had entered the words "Voluntary Retirement" in her service book as advised by the Director of Education, Porvorim.

Under Section 18(a) of the Protection of Human Rights Act, 1993, the Commission recommended that, the Respondents No. 2 & 3 consider that the Complainant had "**voluntarily retired**" on 16/06/2015 and ensure that the Complainant receives her pension and GPF amount in accordance with law.

Copy of the Inquiry Report was sent to the Respondents No. 2 & 3, calling for their comments, including the action taken or proposed to be taken within a period of one month or on or before 29/10/2021, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

The Action Taken Report was received from the Respondent No. 3 on 01/12/2021 and the Inquiry Report along with the Action Taken Report was published in the Government Gazette.

11) Proceeding No.43/2021

This case had been disposed of by Inquiry Report dated 13/10/2021.

The Complaint dated 05/02/2021 was received in this Commission, with a request to extend time at the rehabilitation shelter.

The Complainant, Smt. Vaishali Revodkar has stated that her house at Revora was damaged due to natural calamity when a huge tree fell on the house during the rainy season. Under the Disaster Management Act, 2005, she was provided shelter in Government Quarters at Mapusa, till her house was repaired. She stated that she is from the Dalit family and living in the Devasthan property and the Management has given her permission to repair the same.

She also stated that she applied to the Revora Panchayat for NOC for the repair of the house which was forwarded to the BDO, but her application was rejected as her husband did not sign the application. She has stated that she is legally married and co-owner of the house and her husband wants to evict her from the shared household and did not sign her application. She also stated that she had earlier got relief from the JMFC under the Domestic Violence Act and her husband was refrained from evicting her.

The Complainant stated that she had made a fresh application to the Panchayat in respect of her equal right as co-owner of the house. In the meantime she has received letter from the authorities to vacate the Government Quarters and that no more extension would be given. She stated that she is unemployed and has two children and lives on the monthly maintenance of Rs.5,000/-. Hence, she approached this Commission to stop discrimination of women by the Panchayat authorities and BDO and to remove the said obstacle by getting NOC to repair the house.

On perusing the complaint, the Commission, by Order dated 24/02/2021 called for the report/reply from the four Respondents.

The Respondent No.1, i.e. the Collector, North Goa District, Panaji-Goa, filed their reply on 25/03/2021. They stated that on 02/07/2017, a tree had collapsed killing a 10 year old boy and injuring 5 others including the present Complainant. Under the Disaster Management Act, 2005 temporary accommodation in Government Quarters were provided to the Complainant and others which was extended from time to time upto 03/02/2021. The Complainant was also given compensation of Rs.80,000/-. The Respondent No.1 stated that the Complainant continued to stay in the temporary accommodation from 14/11/2017 to 03/02/2021 and without permission of the relevant authorities beyond 03/02/2021.

The Respondent No.4, i.e. the Assistant Engineer, Sub-Division-III, W.D. VIII, Karaswada, Mapusa-Goa, filed his report dated 19/03/2021 stating that the Complainant had been allotted "C" type Government

Quarters from 14/11/2017 to 13/05/2018 and the same was extended as per the request of Additional Collector upto 03/02/2021 and the Additional Collector had informed that no further extension shall be granted.

The Respondent No.4 also stated that as per the procedure for allotment of Government Quarters, the Respondent No.4 has issued notice dated 08/02/2021 to the Complainant to vacate the Quarters.

The Respondent No.2, i.e. the Block Development Officer, Mapusa, Bardez-Goa, filed their reply dated 31/03/2021, relying on several documents of the Office of the BDO, Village Panchayat Revora and of the Collector, North Goa as well as letters of the Complainant. The Respondent No.3, i.e. the Secretary, Village Panchayat Revora, Revora, Bardez-Goa, has not filed any reply/report in the present case.

On the replies of the Respondents No.1, 2 & 4 being served on the Complainant, she filed her Rejoinder on 13/08/2021. She sought an order from this Commission directing the Respondents No.2 & 3 to grant her NOC to repair the house, being a co-owner. She also filed further rejoinder on 18/08/2021, as she had received a fresh notice dated 16/08/2021 from the office of the Respondent No.4 to vacate the Quarters within 3 days.

At the stage of hearing, the Complainant was heard in person. Shri Vinod Gawde, Head Clerk of the Respondent No.1 and Shri Umesh Shetgaonkar, V.P. Secretary on behalf of Respondent No.2 were also heard. Adv. Shri Neil Fernandes for Respondent No.3 and Shri Anil Parulekar, Assistant Engineer on behalf of Respondent No.4 were heard.

The Commission has gone through the records and proceedings. The Commission finds that the grievance of the Complainant is that her application for repair of the damaged house at Revora was not granted by the Village Panchayat as her husband had not signed the application.

The Commission has noted that the Respondent No.1, vide their letter dated 21/12/2020 to the Respondents No.2 & 4, had directed the BDO, Mapusa to monitor the issue of repair license to the Complainant within 15 days and that the Complainant had been instructed to undertake repairs within one month. The Office of Respondent No.1 had noted that since the proposal of repair license is under consideration, the Respondent No.4 was requested to extend the accommodation granted to the Complainant for a period of 45 days only and that no further extension shall be granted.

The Commission finds from the documents filed by the Respondent No.2 that the Office of the BDO had addressed a letter dated 08/03/2021 to the Complainant that the Office had issued Memorandum to the Village Panchayat Secretary, Revora to look into the matter in accordance with law and submit compliance report to the office

and the reply dated 19/02/2021 had been submitted by the Village Panchayat Secretary.

The Commission finds from the said reply of the Village Panchayat, Revora, dated 19/02/2021 that the application of the Complainant for house repair was rejected due to lack of documents. As per the annexed Resolution, the Panchayat passed Resolution on 10/02/2021 that the Panchayat cannot forward the file to the BDO without NOC from the house owner.

The Complainant had submitted before this Commission that she has strained relations with her husband against whom she has obtained relief from the JMFC, under the Domestic Violence Act, 2005 and he was refrained from evicting her from the house.

The documents on record indicate that the Complainant has filed the application to the Panchayat for repairs of the damaged house and has submitted the required documents including the Architect plan and NOC from the Devasthan Committee who own the property.

The records indicate that the Panchayat has not been inclined to grant the application for repairs only because her husband has not given his No Objection Certificate.

The Complainant is the co-owner of the house which was damaged by falling of a tree in 2017. She seeks permission to repair the said house. The House Tax receipt of the house stands in the name of her husband. The Village Panchayat, by not granting her permission has been negligent in performance of their duties as she is the legally married wife of Shri Vilas Revodkar.

The Commission finds that, in the present case, the Village Panchayat of Revora has violated the human rights of the Complainant by not forwarding her application to the BDO, for the house repairs of House No.234 at Revora, only as her husband has also not given N.O.C.

After the collapse of the house, the Complainant was given Government accommodation under the Disaster Management Act, 2005, by the Respondent No.4, on the Order of Respondent No.1. Admittedly, as the house repairs could not be carried out, the Complainant has continued to occupy the Government accommodation on temporary basis.

The Commission finds that it would be appropriate to recommend to the Panchayat to consider the grant of her application for repairs as she is the co-owner of the house and to forward the same to the BDO. So also the Commission is of the opinion that the Complainant could be permitted by the

Respondents No.1 & 4 to continue occupying the Government Quarters for a period of 60 days from the grant of permission of house repairs.

Accordingly, the Commission passed the following Order:

- a) *The Commission recommended that the Respondent No.3 place the application for permission of house repairs of House No.234 before the Village Panchayat of Revora for re-consideration.*
- b) *On the re-consideration by the Village Panchayat, the same be forwarded to the BDO, Bardez for grant of permission of house repairs.*
- c) *The Commission recommended that the Respondents No. 1 and 4 consider the extension of the permission to the Complainant to stay in the Government quarters at Colvale, T.I.P. Complex, C-3, for a further period of 60 days from the date of grant of permission by the Respondents No.2 and 3 to the Complainant, for carrying out repairs of the house.*

Action Taken Report was received from the Respondent No. 1 on 23/11/2021 and the Inquiry Report along with the Action Taken Report were sent for publication in the Government Gazette in terms of Section 18 (f) of the Protection of Human Rights Act, 1993.

12) Proceeding No.302/2016

This case had been disposed of by Inquiry Report dated 15/03/2022.

The Complainant, i.e. Alcina Fernandes, President, Social Justice Forum – Sao Jose De Areal, has filed the present Complaint, dated 24/10/2016, with various authorities including this Commission, regarding pollution allegedly caused by the factory of Respondent No. 2, i.e. Goa Carbon Limited, situated at Sao Jose De Areal, Salcete-Goa.

The Complainant says that the Respondent No. 1, i.e. the Member Secretary, Goa Pollution Control Board, Saligao, Bardez-Goa, had inspected the Church and the surrounding houses and made an inspection report which clearly indicated that the pollution was due to the emission of the particles from the factory, which does not have control over the said pollution. According to the Complainant, the Company, without complying with the pollution control report, has started the production. The Complainant annexed several documents to the Complaint namely the copies of photographs, Inspection Report of Respondent No. 1, six complaints to Village Panchayat of Sao Jose De Areal, newspapers namely : The Goan dated 23/03/2016, Herald dated 23/03/2016, Herald dated 25/04/2016, Herald dated 03/05/2016 and complaint to the Respondent No. 1.

After hearing the Complainant on admission, notice was issued to the Respondent No. 1 to file reply.

In response to the notice, on 08/06/2017, the Respondent No. 1 filed their reply. The Respondent No. 1, in short, alleged as follows:- Taking into consideration the Inspection Report, they issued directions dated 08/12/2016, under Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act, for short) and under Section 33(A) of the Water (Prevention and Control) of Pollution Act, 1974 (the Water Act, for short), to the Company Secretary of M/s. Goa Carbon; the Company was directed to submit compliance report and the Executive Director of the Company filed the reply and compliance report dated 22/12/2016; the Company appeared to have made efforts by adopting various measures as mentioned in the compliance report; the officials of the Respondent No.1 again carried out inspection of the Unit of M/s. Goa Carbon on 17/04/2017 in the presence of the officials of M/s. Goa Carbon Limited and submitted a report which suggested various recommendations to be complied with by the Unit of Goa Carbon; the stack monitoring of kiln and cooler stack of the factory was conducted at three different locations during the period from 30/01/2017 and 17/02/2017; the Ambient Air Quality Monitoring was done from 02/02/2017 to 16/03/2017 at three different locations and the analytical reports showed that the pollution exceeded the permissible limits; efforts are being made by the Unit to comply with the recommendations in order to reduce the stack emission and to control the pollution. Along with their reply, the Respondent No. 1 produced copies of various documents namely: directions dated 08/12/2016 under Section 31(A) of the Air Act, given by the Respondent No. 1; inspection report of the Respondent No. 1 dated 18/11/2016 with annexures; reply dated 22/12/2016 of the Respondent No. 2 and inspection report of the Respondent No. 1 dated 23/03/2017 along with annexures.

Thereafter on 18/06/2017, in the presence of the President of the Complainant and Special Public Prosecutor on behalf of the Respondent No. 1, it was recorded in the roznama that the records indicate that the Respondent No. 1 has taken appropriate steps in this matter. The Complainant did not object for such recording. The learned Sp. P.P. stated that three months time was granted to the Unit to take certain measures to control pollution by installing equipments and that the Unit has been directed to furnish Bank Guarantee of Rs. 10 lakhs. The learned Sp. P.P. further submitted that in case the Unit fails to adhere to the directives of the Pollution Control Board, the Board shall initiate legal steps against the Company/Unit. On 07/11/2017, the learned Sp. P.P. submitted that Renewal of Consent dated 19/09/2017, valid for 90 days from the date of issue, has been given to the Company to operate the Unit with conditions and that Bank Guarantee of Rs. 10 lakhs has been taken from M/s Goa

Carbon Limited. On 22/11/2017, an application was filed by the Respondent No. 1 thereby stating about the said Consent and Bank Guarantee. Copies of the Consent and the Bank Guarantee were produced. On 12/03/2018, the learned Sp. P.P. produced a copy of the directions dated 15/02/2018, issued by the Member Secretary of the Respondent No. 1, directing the Company to close/suspend the operation of the Unit within a period of 15 days from the receipt of the directions since the operation of the Unit was after the expiry of the Consent dated 19/09/2017 and without obtaining the Renewal. On 04/07/2018, the learned Sp. P.P. produced a copy of the Renewal of Consent dated 07/06/2018 to operate under certain conditions, which was to remain in force for three months i.e. till 07/09/2018. This Consent was in supersession of the earlier Consent Order dated 09/03/2018. On 04/01/2019 the Respondent No. 1 filed Status Report along with several annexures. The Complainant, on 20/03/2019 filed reply to the said status report and produced photographs of the site and a CD-R dated 20/03/2019. On 28/03/2019, the Respondent No. 1, in supersession of earlier Consent Orders issued vide Order No. 5/1985/18-PCB/CI-4850 dated 11/09/2018 and Amendment No. 5/1985/14-PCB/CI-4951 dated 16/11/2018, issued renewal of consent to operate valid upto 31/03/2024, i.e. for five years. On 06/06/2019, it was reported on behalf of the Complainant that though the Consent to operate the Unit had expired on 31/03/2019, however, the factory Unit was still operating. Hence the Police Investigation Team of this Commission was directed to carry out inspection within a radius of one kilometer from the center point of the factory to ascertain air pollution on account of operation of the Unit. On 04/07/2019, the Police Investigation Team submitted its Inspection Report along with annexures. On 10/06/2020, the Complainant filed reply to the inspection report submitted by the Police Inspection Team and pointed out that the inspection report mentioned that in order to detect respirable dust, fresh ambient air quality monitoring was required to be done in the surrounding area for which the Panchayat and local residents were required to provide sites/locations to carry out the said monitoring. The Respondent No. 1 was therefore asked to clarify about the above. The Police Inspection Team was directed to produce all the photographs which were taken at the site but not produced. On 06/07/2020, reply was filed by the Respondent No. 1 and the Police Inspection Team produced copies of photographs. Say was filed by the Complainant. On 12/11/2020, the Complainant filed application suggesting the premises of which photographs were required to be produced. The Police Inspection Team filed reply to the said application.

On 11/02/2021, the Goa Carbon Limited filed application for leave to intervene in the Proceedings. By Order dated 09/04/2021, this Commission allowed the application and the Goa Carbon Limited was added as Respondent No.2.

The Respondent No. 2 filed their reply to the Complaint. They, in short, stated as follows:- The Goa plant, manufacturing Calcined Petroleum Coke (CPC) has been operational for the last more than four decades. The Respondent No. 2 has done its functioning with due care and caution and out of the total 57 workmen, 70 % are locals. More than 40 direct and more than 200 indirect employees have been working for the past 20 years without any symptoms of serious illness. The plant has been operational after complying with the applicable statutory permissions and with valid consent to operate issued by the Respondent No. 1 which is valid upto 31/03/2024. Based on the suggestions made by the Respondent No. 1, the Respondent No. 2 has implemented numerous measures to maintain the plant, including investment of Rs. 5 crores to install a state of the art Dust Extraction System (DES)/Air Pollution Control System (APCS) to significantly negate the dust particles. The Complaint is not relevant as the Company has taken all the necessary measures as directed to be taken by competent authorities and is operating within prescribed norms. The Respondent No. 1 has prepared proficient report dated 10/02/2020 and the Police Investigation Team has also submitted Site Inspection Report. The Respondent No. 2 has taken measures from time to time to control the pollution in the vicinity of the factory (A list of fifteen measures has been given in paragraph 14 of the reply). The Respondent No. 2 has, inter alia, produced renewal of consent dated 28/03/2019, issued by the Respondent No. 1, which is valid upto 31/03/2024, presentation to the dignitaries, report of Respondent No. 1 on Ambient Air Quality, report of Police Investigation Team.

The Complainant has filed a rejoinder to the reply of the Respondent No. 2.

Final arguments were heard. Adv. Ms. A. Almeida argued on behalf of the Complainant. Adv. Shri J. Godinho argued on behalf of the Respondent No. 1 and Sr. Adv. Shri Sudin Usgaonkar argued on behalf of the Respondent No. 2. We have gone through the entire material on record.

It was contended by the Ld. Sr. Advocate of the Respondent No. 2 that the Factory of the Respondent No. 2 has been operational for the last 50 years and that the population in that area has become dense only now and hence the Respondent No. 2 cannot be blamed. It is not the case of the Respondent No. 2 that there are restrictions on residing within the radius of certain distance from the factory and that people are illegally residing there.

The above contention of the Respondent No. 2 cannot be accepted since that cannot give right to the Respondent No. 2 to pollute the locality.

It was contended by the Ld. Sr. Counsel for the Respondent No. 2 that there is regulatory mechanism, for control of pollution, i.e. the Respondent No. 1 and that private persons cannot be experts and that since the factory of the Respondent No. 2 is operating under valid consent given by the Respondent No. 1, the proper course would be to challenge the order of consent and not to file complaint of violation of human rights. No doubt, anybody can establish and operate industrial plant with the previous consent of the Respondent No. 1 and if consent is wrongly given, the same can be challenged. But it should be kept in mind that the consents given to the Respondent No. 2 were under certain conditions. In their reply filed on 08/06/2017, to the Complaint, the Member Secretary of the Respondent No. 1 has stated that the Ambient Air Quality Monitoring was conducted from 02/02/2017 to 16/03/2017 at three different locations and the analytical results showed that the pollution exceeded permissible limits. The Respondent No. 1 has produced the Inspection Report along with the Ambient Air Quality Monitoring report with analytical report. It is seen from the records that the consent to operate dated 19/09/2017 vide order bearing no. 5/1985/14-PCB/CI-3201 was issued to the unit of the Respondent No. 2 with certain conditions, one of which was to streamline the coke (RCP and CPC) handling activities and to install adequate and effective Air Pollution Control Systems in rotary Kiln stack, within 3 months but during inspection it was found that the unit had not installed the Air Pollution Control Systems and the unit was being operated in violation of the Consent condition. That constituted an offence. By order dated 15/02/2018, the Respondent No. 1 had directed the Respondent No. 2 to close/suspend the operation of the unit.

The Officials of the Respondent No. 1 had carried out inspection of the locality on 22/03/2015. Coarse black powder particles were seen deposited on the Mangalore tiles and in the balcony of the Church building. In the balcony of the house of Mrs. Alina Fernandes also, coarse black powder particles were seen deposited. The housekeeping inside the factory unit was found to be not satisfactory and coarse particles were found inside the premises. Inspection was again carried out on 18/11/2016. Similar dust particles were found accumulated on the nearby residences near the factory. Such deposits certainly result in undesirable interference with the comfort of the residents. Several recommendations were made by the inspection team after both the inspections. There are photographs produced by the Complainant which show black powder particles on the roof and plants.

The Investigation cell of this Commission, as per the direction of the Commission, on 18/06/2019, carried out site inspection within a radius of one kilometer from the central point of the factory. At a distance of about 10 metres from the factory, mango leaves turned black due to deposit of black dust were seen. Within a distance of about 100 metres from the factory, part of the field soil which was not ploughed, was seen black in colour. Black particles were seen in the nullah. Black particles were seen on the roof of the house of Maria Joaquina near the factory. Black dust particles were found inside the houses on the floor, stair cases, balconies, furniture, cars, two-wheelers, coconut leaves, alters/statues of Our Lady of Lourdes Chapel, etc. The Inspection Report says that the consent conditions are partly complied with.

The unit of the Respondent No.2 manufactures Calcined Petroleum Coke from processing of raw Petroleum Coke. This is hazardous. Therefore, pollution is bound to be there and it can cause skin, eye or lung irritation. Air pollution is one of the greatest environmental risks to the health of the people. The lower the pollution, the better the health of the people. Merely because the consent to operate given to the Respondent No. 2 has not been challenged, it cannot be automatically said that the unit of the Respondent No. 2 does not cause pollution. It is seen that every time the consent to operate is given with several conditions but we do not find that serious attempts have been made by the Respondent No. 1 to see if those conditions are strictly complied with. The right to breathe clean air is a human right and air pollution is a violation of human rights. In our considered opinion, some recommendations must be made to the Respondent No. 1.

The Commission made the following recommendations:

(a) The Respondent No. 1 shall install Ambient Air Monitoring Equipments at different locations identified by the Complainants and carry out the monitoring at least over a period of one year and shall take into consideration the reports while issuing the permission to operate the unit;

(b) Regular inspection shall be carried out by the Respondent No. 1 inside the factory and also within a radius of one kilometer from the center point of the factory and necessary direction shall be given to the Respondent No. 2, to stop the pollution, if any;

(c) Whenever the consent to operate the unit of the Respondent No. 2 is given with conditions, the Respondent No. 1 shall see to it that all those conditions are complied with within certain prescribed time limit and if not complied with, the Respondent No. 1 shall consider whether to withdraw/suspend consent.

(d) No renewal of consent to operate the unit shall be given by the Respondent No. 1 unless all the conditions mentioned in previous consent have been duly complied with.

(e) Consent to operate the unit shall not be given by the Respondent No. 1 for more than for one year every time, from 01/04/2024, when the present consent to operate expires.

Copy of the Inquiry Report was sent to the Respondent No. 1, calling for their comments, including the action taken or proposed to be taken within a period of one month or on or before 18/04/2022, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

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

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

Sd/-
(Pramod V. Kamat)
Member
Goa Human Rights Commission

Dated:17/06/2022
Place: Panaji – Goa.