

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Appeal No. 131/2009

Mr. Sadanand D. Vaingankar,
304, Madhalawada, Harmal,
Pernem – Goa .

.... Appellant

V/s

1) Public Information Officer,
State Registrar-cum-Head of Notary Services,
Shrama Shakti Bhavan, 7th Floor,
Patto,
Panaji- Goa

.... Respondent No.1.

2) First Appellate Authority,
Law Secretary,
Government of Goa,
Secretariat, Porvorim – Goa

... Respondent No. 2.

Appellant in person

Respondent No. 1 alongwith Adv. Smt. N. Narvekar.

Adv. Harsha Naik for Respondent No. 2.

J U D G E M E N T
(17/08/2010)

1. The Appellant, Shri Sadanand D. Vaingankar, has preferred this Appeal praying that the Appeal be allowed; that the Public Information Officer/Respondent No. 1 be directed to pay fine as applicable and that First Appellate Authority/Respondent No. 2 may be ordered to remove incompleteness from his Judgment.

2. The facts leading to the present Appeal are as under:

That the Appellant made three letters dated 30.07.2009 seeking certain information under Right To Information Act, 2005 (RTI Act for short) from the Public Information Officer/Respondent No. 1.

That the Public Information Officer/Respondent No. 1 failed to furnish any information within limitation. Being not satisfied the Appellant preferred three separate Appeals to First Appellate Authority.

That the Respondent No. 2 after due hearings passed the Judgment on 22.10.2009.

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That the information furnished is not within the time specified under sub-section 1 of section 7 and that Public Information Officer is liable for penalty under sub-section 1 and 2 of section 20 and being aggrieved by the Judgment of First Appellate Authority the Appellant preferred the present Appeal.

It is the case of the Appellant that Public Information Officer is liable for fine in all three matters and that the Judgment delivered by Respondent No. 2 is incomplete. It is also the case of the Appellant that payment of Rs. 5/- per page is contradictory to the Act and the said Judgment speaks nothing in that regard.

3. The Respondents resist the Appeal and their reply is on record.

It is the case of Respondent No. 1 that the Appellant made three separate applications dated 30.07.2009 seeking certain information. That the information sought in letter no. 1, letter no. 2 and letter no. 3 pertains to Sub Registrar's Office, Pernem and the information that is sought in letter no. 1 is in the nature of sale deeds, name of parties, about the Registrar, details of land, about power of attorney, etc. That in letter no. 2 information sought is about names, designations and residential address of total staff, duty hours, etc. and in letter no. 3 about some letters, documents and Xerox copies of affidavits, etc. That since the information sought by the Appellant was to be provided to the Public Information Officer by the Civil Registrar-cum-Sub Registrar, Pernem, Respondent No. 1 forwarded all the above said applications to the Sub-Registrar, Pernem. That the information to be furnished involved searching of records of eight and half years from the field office, namely, Sub Registrar, Pernem and this had to be done without compromising the day-to-day work at the said office. It is the case of the Respondent No. 1 that as on the last date of furnishing this information, i.e. on 29.08.2009, the exact volume of information to be supplied was still unclear and the Public Information Officer had only two options i.e. complete the work of search and then inform the Applicant/Appellant the exact amount of fees payable or inform the Applicant/Appellant before

29.08.2009 that the work of collecting information as incomplete and that it will take some more time to complete the work. That the officials of Sub Registrar, Pernem in the true spirit of RTI Act proceeded to complete the work of extracting the required information and made available such information to the Public Information Officer/Respondent No. 1 on 29.09.2009. That vide letter dated 30.09.2009 the Respondent No. 1 requested the Appellant to deposit the fee. However, in the meantime the Appellant filed three Appeals before the First Appellate Authority. That there was a delay. However, the same was not malafide or intentional delay in carrying out the said work of completing the said information. It is however the case of Respondent No. 1 that in order to supply the information sought by the Appellant the field office required to check the registers and prepare the list of sale deeds by verifying the schedule wherein the area of plot of land was 4999 sq. mts. and above and also the description of such land, survey no., and location-wise and this exercise was required to be done for the last eight and half years. That about 244 sale deeds were to be seen and about 319 power of attorneys had to be detached which were stitched to the said sale deeds and about 4030 pages were required to be Xeroxed and this detaching and stitching consumed sometime. That the First Appellate Authority disposed off the said three Appeals by common Judgment on 22.10.2009 and directed to provide the information free of cost as the same could not be furnished within prescribed time. That information was furnished in spite of great inconvenience and disturbance to normal work in the said field office and that there was absolutely no intentional delay. That there is no justification for imposing penalty except by mechanical interpretation of the relevant section 20 of the RTI Act. That the Appellant has already received the benefit of waiver of fees for supply of information amounting to Rs. 14,035/- and that further claims may be firmly rejected as the alleged delay is a calculated ploy by the Appellant to force the Public Information Officer to cross the limit of thirty days and thereafter make a grievance out of it. It is also the case of the Respondent No. 1 that since there is no malafide defiance of law, the question of fixing the responsibility of loss of potential revenue of the amount of Rs. 14,035/- does

not arise and no orders in this aspect need to be passed as there is no default on the part of the Public Information Officer or First Appellate Authority. According to the Respondent No. 1 the Appeal is liable to be rejected.

4. It is the case of Respondent No. 2 that the Appellant failed to pay the necessary charges. That the Judgment passed by Respondent No. 2 is rightly passed and with proper application of mind and that there is no question of removing any errors. That the Appeal is not in time. It is also the case of Respondent No. 2 that information furnished to the Appellant was free of cost and the same has been admitted by the Appellant. According to Respondent No. 2 the Appeal is liable to be dismissed.

5. Heard the arguments. Appellant argued in person. Adv. Smt. Nilima Narvekar argued on behalf of Respondent No. 1 and Adv. Smt. Harsha Naik argued on behalf of Respondent No. 2. All the parties advanced elaborate arguments.

6. The Appellant narrated the facts of the case in detail. He submitted that the three applications were filed and that information was not furnished in time. According to him penalty is to be imposed as per section 20 of the Act. He also submitted that they have charged Rs. 5/- and as per the Act Rs. 2/- are to be charged. He also submitted that information submitted is free. He pointed out about the incorrectness of the Judgment and submitted that correction is required. He referred to para 8 of the Appeal memo. He next referred to para 12 of reply of Respondent No. 1 and submitted that section 4 is not complied. According to him the said para is totally false. According to him information ought to have been made in categorized form. Appellant vehemently contends that penalty is to be levied.

7. Adv. Narvekar also referred to section 20 and its interpretation. According to her, information sought was bulky and there was no malafide intention. She also referred to number of sale deeds, powers of attorney and period of eight and half years for which information was sought. According

to her, for levying penalty there should be criminal mind. Here the delay has occurred as the information was huge and was to be collected from the field office. According to her delay, if any, ought to be condoned in the circumstances of the case.

8. Adv. Harsha Naik for Respondent No. 2 submitted that the Appeal is not maintainable as the same is not preferred under proper section. That Appellant cannot ask for fine nor can he ask for removing incompleteness. According to her, Judgment of Respondent No. 2 is proper and just. On merits she also referred to the facts of the case and also submitted that information furnished is free of cost. According to her Appeal as such is not maintainable and the same is liable to be dismissed.

9. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is not in dispute that applications seeking information were filed. It is not in dispute that reply was not furnished in time and that Appellant preferred three separate appeals. It is also not in dispute that during the pendency of Appeal the information was furnished and the same was given free of cost. The Appeal is essentially for penalty and to remove incompleteness from the judgment of Respondent No.2.

It is seen that 3 applications dated 30/07/2009 were filed and information sought was in relation to Sub-Registrar's Office of Pernem. Strangely the applications were filed before the Public Information Officer State Registrar-cum-Head of Notary, Panaji. The information consisted of various items and all regarding Pernem sub-Registrar Office. By letter dated 31.07.2009 the State Registrar-cum-Head of Notary transferred the said application to the Civil Registrar-cum- Sub Registrar, Pernem informing to furnish the information by letter dated 30.09.2009 the Appellant was called upon to pay Rs.20/- and collect information. Charges of other application were Rs. 14010/- and of the third were Rs. 5/-. However the Appellant did

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not collect the said information. That is to say, the Appellant failed to pay the necessary charges and collect the information. However information was given free of charge. As per the order of First Appellate Authority at the request of the Appellant the information was furnished on 14.10.2009 and information of one item was furnished on 24.10.2009. There is also no dispute that Appellant has received full information.

10. Now it is to be seen whether there was delay in furnishing information and if so, was there any reasonable cause for exonerating the Public Information Officer?

Admittedly the information was sought from the Respondent No.1 but the same related to Sub-Registrar's office at Pernem. The applications dated 30.07.2009. As per letter dated 31.07.2009 the same were sent to Sub-Registrar Pernem. That means information was to be collected from there.

As per sub-section (1) of section 6, expressly requires that a person who desires to obtain information under the Act shall make a request alongwith the prescribed fee to the Public Information Officer of the concerned Public Authority specifying the particulars of the information. The Appellant was well aware about the availability of information in the office of Sub-Registrar Pernem, yet he filed applications with Head of Notaries, Panaji.

By Application dated 30.09.2009 the Appellant was called to pay the charges/fees but he failed to collect the same. Under Section 7(3) (a) the period intervening between the despatch of intimation (indicating the further fee to be deposited) and payment of fee shall be excluded for the purpose of calculating the period of 30 days.

11. It is the case of Respondent No. 1 that the information was sought vide 3 applications and issues related to Sub-Registrar's office at Pernem. In one application information sought is about sale deeds registered from 01.01.2002 onwards and also about power-of-attorneys. In another, names and designations and residential address of total staff. In the third letter,

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Xerox copies of affidavits etc. It is the contention of the Respondent No. 1 that information to be furnished involved searching of records of eight and half years from the field office i.e. Office of Sub-Registrar Pernem and this had to be done without compromising day-to-day work at the said office. It is also the case of the Respondent No. 1 that as upto the last date of furnishing this information i.e. 29.08.2009, the exact volume of information to be supplied was still unclear and the Public Information Officer had only two options i.e. complete the work of search and then inform the Appellant the exact amount of fees payable or inform the Appellant before 29.08.2009 that the work of collecting information was incomplete and that it will take some more time to complete the work. It is also the case of Respondent No. 1 that information was made available by the Officials of the Sub-Registrar of Pernem. In short information pertained for about eight and half years and about 244 sale deeds and detaching about 319 power of attorneys stitched to 244 sale deeds. In short there were many pages. Admittedly there is a delay. The only point to be seen is whether in such a scenario, as mentioned above, can the delay be condoned?

12. I have perused some of the rulings of Central Information Commission on the point.

- (i) In Shri C.P. Singh V/s Airport Authority of India (Appeal No.CIC/OK/A/2007/00604 dated 14.05.2007) the Commission noted that voluminous information containing 158 pages of documents has been meticulously compiled. There was delay of 7 days, but information was furnished free of cost. Therefore request for imposition of penalty is not accepted.
- (ii) In Anil Kumar V/s Department of Telecommunication (Appeal No. 29/ICPB/2009 dated 12/05/2006) it was observed that since all the information sought which could be furnished, his Appeal has become infructuous. However there had been considerable delay in providing the information.

Here delay was condoned since information was furnished and C.P.I.O assured that such delays would not occur in future.

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(iii) In a case (Rajendra Prasad Jain V/s N.D.M.C Appeal No. CIC/WB/A/2006/00206 to 00210, dated 17.08.2006) where no information provided being huge, the Commission noted that there is reasonable cause for delay in providing the considerable information sought. Therefore no penalty is imposed. The C.P.I.O should have informed the applicant within the specified time limit under section 7(1) that because of the nature of the information sought the same could be provided only within the parameters of section 7(9) and if so required on payment of additional cost under section 7(3). Because no such intimation was provided to the applicant within that time limit, the information sought comes under section 7(6) and shall be provided free of charge.

I have also perused some other rulings wherein delay has been condoned.

I have also perused the judgment in Writ Petition No. 205/2007 relied by Respondent No.1.

In the factual matrix of this case delay cannot be termed as intentional or malafide as contemplated under section 20 of the Right to Information Act. In my view no penalty need be imposed on the Respondent No.1 because the delay is attributable to the nature of information which needed time consuming collection which brings it within the ambit of “reasonable cause” under section 20(1) of the Right to Information Act.

13. It was contended by the Appellant about incorrectness of letters Exhibit H, I & J wherein Public Information Officer informed the Appellant to pay Rs. 5/- per page.

The provisions of the Act dealing with the matter of fee is as under:-

Under section 6(1) of the RTI Act the application for information is to be accompanied with the prescribed fee; section 7(1) stipulates that the Public Information Officer shall provide the information on payment of such fee as maybe prescribed; Proviso to section 7(5) stipulates that the fee prescribed under section 6 (1), 7(1) and 7(5) shall be reasonable. No fee is chargeable

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from the persons who are below poverty line. Section 7(6) provides that notwithstanding anything contained in sub-section (5) of section (7) information shall be provided free of charge where the public authority fails to comply with the time limits specified in section 7(1).

In the instant case the information is provided free of cost. Appellant's contention is that he was told to pay at the rate of Rs.5/-. According to Adv. for Respondent No. 1 it is not so and that they can charge additional fee if information is voluminous.

In a case (Dr. Balwant Singh V/s BSNL, Appeal No. 27/ICPB/2006 dated 07/06/2006) the applicant had sought for information relating to whole of the nation since January, 2001 and onwards, though such a demand is against the spirit of the Act. However, the Chief General Managers were asked to supply the information. They required to collect the information from 322 field units and the documents ran into 1920 pages. The Applicant was thus required to deposit Rs. 3840/- @ Rs.2/- per page. Similarly other information required further fee of Rs.5500/-. The Applicant was intimated to deposit the sum of Rs. 9340/- so that information could be provided. The Appellant cannot allege that by seeking exorbitant cost BSNL was denying the information. Since the CPIO had already collected the information, the Commission commended the steps taken by the CPIO. In fact, each and every information sought by the applicant cannot be expected to be readily available at a single point.

I have also perused some other rulings such as P.K. Sharma V/s Motilal Nehru College (No.CIC/INOIC/CI2006/0121 dated 16.11.2006) and M.P. Radhakrishanan V/s Southern Railway Palghat (case No.CIC/OIC/C/2007/00415 dated 21/01/2008 here heavy drainage of Manpower and office time involved). In these cases the Central Information Commission did not deliberate reasonableness of the cost but opined that additional fee to be reasonable.

In view of the above I am unable to agree with the contention of the Appellant. In my view there is no infirmity in the order of First Appellate Authority.

14. It was contended that who should be held responsible for free supply of information. The Public Information Officer had given notice or intimation to pay the amount, however, Appellant did not pay First Appellate Authority ordered to pay free of charges under section 7(6). Under the circumstances it is for the concerned authority to consider the same.

15. Appellant also referred to para 12 of reply of the Respondent No.1. I have perused the same. I agree with Appellant about this contention of section 4 of RTI Act, etc. Respondents on their part are also right when huge information is asked.

Where information runs into thousands of pages and where search is required the Public Information Officer can inform the applicant about taking some time in furnishing information and at times section 7(9) of Right to Information Act can be invoked and applicant's consent can be sought.

16. Advocate for the Respondent No.2 submitted about malafide intention etc. I have already referred to the same. In any case as observed hereinabove, I am of the opinion that delay is to be condoned. However Public Information Officer should be careful in future.

17. Adv. for the Respondent No. 2 submitted that appeal is not maintainable. Order of the First Appellate Authority is not against the Appellant. However, the appeal appears to be for fine and removing incompleteness from the Judgment. In view of the above, I do not find any infirmity in the order of First Appellate Authority.

18. Adv. for Respondent No. 2 contends that Appeal is not maintainable as the same has been filed under section 7(1) of the Right to Information Act. Appeal is not maintainable under section 7(1). However, the same

appears to be by mistake. Even otherwise this mistake is to be over looked as the same comes from an information seeker.

19. In view of all the above I pass the following order:-

O R D E R

The appeal is dismissed.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 17th day of August, 2010.

Sd/-
(M.S. Keny)
State Chief Information Commissioner

