

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No. 43/SCIC/2009

Mr. Kashinath Shetye,
Alto-Fondvem,
Ribandar, Tiswadi-Goa.

...Appellant

V/s

1) Public Information Officer,
KTCL, Parasio-de-Goa,
Porvorim-Goa

...Respondent No.1

2) The First Appellate Authority,
Managing Director,
KTCL, Parasio-de-Goa

... Respondent No.2

Appellant Absent.

Adv. A. Kakodkar for Respondent no.1

JUDGEMENT
(05-08-2011)

1. The Appellant, Shri Kashinath Shetye has filed the present appeal praying that the information as requested by the Appellant be furnished to him, that the penalty be imposed on the P.I.O. as per law for denying the information and that compensation may be granted to the Appellant for harassment and detriment.

2. The brief facts leading to the present appeal are as under:-

That the Appellant, vide an application dated 09/03/2009 sought certain information under Right to information Act.(R.T.I., act for short from the Public Information Officer (P.I.O.)/Respondent No.1. That the P.I.O./Respondent No.1 failed to furnish the required information as per the application of the Appellant and rejected the information. That the Appellant being not satisfied preferred the First Appeal before the First Appellant Authority /Respondent No.2. That the Respondent No.2 passed the order without hearing the Appellant. That the Appellant had given Authority to one Mahesh Kamat to inspect and collect the document which was rejected by S.P.I.O. without giving reasons. Being aggrieved by the order of the F.A.A. the Appellant has preferred the present appeal on various grounds as set out in the memo of appeal.

3. The Respondents resist the appeal and the reply of the Respondent No.1 is on record. It is the case of the Respondent no.1 that the present appeal appears to be a proxy litigation apparently at the behest of Shri Mahesh Kamat to further harass and somehow penalize the officers of K.T.C.L. so as to settle his personal scores with them. That such appeals ought not to have been entertained. On merits it is the case of the Respondents No.1 that he received the application requesting information on 09/03/2009. That the information ran into 11 points with further sub-points. By letter dated 12/03/2009, the then P.I.O. wrote to (a) the Asst. Financial Controller and (b) Personal Manager and they were requested to furnish the said information point wise within 7 days of receipt. That by letters dated 16/03/2009 and 18/03/2009, the Personal Manager and Asst. Financial Controller respectively gave their responses to the information sought. That by letter dated 20/03/2009, the P.I.O. called the applicant to collect the information from his office against payment of the requisite fee and upon payment thereof by letter dated 25/03/2009, the P.I.O. furnished the information. That the Applicant filed a first appeal before Respondent no.2. That by a well reasoned order dated 27/04/2009 Respondent no.2 dismissed the appeal and directed the P.I.O. to submit the information within prescribed limit as per provisions of R.T.I. Act 2005. That pursuant to the receipt of the said order and being appointed as P.I.O. by letter dated 30/04/2009 he wrote to the A.F.C. seeking clarification on the information already submitted /additional information as per the request made by the appellant. That by letter dated 16/05/2009, he wrote to the Appellant informing him that the documents/information is getting ready, that the same is voluminous and cost of taking photocopies comes to around Rs. 1000/- and therefore to kindly contact the Respondent No.1 for inspection of documents required by him. That for the Appellants convenience he also stated that he may come on any working days during morning session within 7 days of the receipt of the letter or on any other date convenient to him after taking prior appointment. However the appellant has since abandoned the proceedings and never came forward to pay the amount nor contacted the P.I.O. The Respondent No.1 denies that order of the Respondent No.2 is not complied with by him and that information is not given to hoodwink at the Appellant. According to the Respondent No.1 the appeal is without any merits and liable to be dismissed.

4. Heard the arguments. The learned Adv. A. Mandrekar argued on behalf of the Appellant and the learned Advocate Shri A. Kakodkar argued on behalf of the Respondent No.1

Adv. for the Appellant submitted that Application is dated 09/03/2009 and the information furnished is incorrect and incomplete. He referred to the facts of the case in details. According to him there is delay in furnishing the information .

During the course of his arguments Adv. for Respondent No.1 submitted about interest of the Appellant and that entire endeavor is somehow to penalize the officers and reason being one Mahesh Kamat. He referred to the reply para 1. According to him reply is not controverted He next submitted that information is furnished. He referred to first Appeal about letter sent not collecting information etc. in details and also pointed certain correspondence. According to him the appeal is to be dismissed.

In reply Adv. for Appellant referred to the appeal and submitted that onus is on the P.I.O. and relied on various judgment. He also referred to the reply and submitted that information be granted.

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

It is seen that by application dated 09/03/2009 the appellant sought certain information from the Respondent No.1 P.I.O. It is seen from the records that the Respondent No.1 by reply dated 20/03/2009 called the Appellant to collect the information on payments of fees and by letter dated 25/03/2009 the P.I.O. furnished the information. However the appellant has not produced these letters before the Commission. It is to be noted here that being aggrieved by this letter dated 25/03/2009 the Appellant preferred the Appeal before the First Appellate Authority. First Appellate Authority has observed that some information has been furnished The F.A.A. in the order dated 27/04/2009 observed as under:-

“..... One of the basic ingredient of the natural justice is that one who approach to the Court must come with clean and clear mind. The allegation leveled by the P.I.O. should have collected the information from the concern department or other sources to meet the requirement of the Appellant and thereby compiling and furnishing the same to the Appellant. Therefore according to me the P.I.O. has failed to comply correctly which caused inconvenience to the Appellant.

In view of the above discussion and as per the averments, the appeal is partly allowed and P.I.O. is hereby directed to furnish the information by collecting the same from the concern department and furnishing the same to the Appellant as per the provision of the R.T.I. Act. I further direct an amount of Rs. 4.00 shall be adjusted accordingly”

This order is dated 27/04/2009.

6. It is to be noted here that in terms of the provision of R.T.I. Act an information seeker/citizen is entitled to seek disclosure of information that is available in a material form with a public authority. That the P.I.O. is not required to collect, compile or create information on the demand of information seeker. A combine reading of section 2(f), 2(i) and 2(J) of the R.T.I. Act would indicate that a citizen is entitled for disclosure of information which is in a material form with a public authority.

In need not refer to this aspect or about section 5(4), 6(3) etc as the P.I.O. Shri A.S. Shirvoikar by letter dated 16/05/2009 informed the Applicant/Appellant that documents/ information is getting ready, that the same is voluminous and the cost of taking Xerox copies comes around to Rs. 1000/-. The Appellant was also called to inspect and collect however, it appears that the appellant did not collect.

In any case the information kept ready can be furnished .

7. Now it is to be seen whether there is delay in furnishing information. It is seen that the original application is dated 9/03/2009 reply is furnished on 20/03/2009 calling Appellant to collect and Appellant collected on 25/03/2009. So this is in time. Again order of F.A.A. is dated 27/04/2009 and letter and addressed is 16/05/2009. This is also in time. There is no delay as such.

8. Now as per the version of Respondent No.1 information is furnished and after F.A.A.'s order other information was kept ready to my mind the same could be furnished.

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

ORDER

The Appeal is partly allowed. The Respondent No.1 is hereby directed to furnish the information in terms of the letter dated 16/05/2009. of the P.I.O. to the Appellant within 30 days from the date of receipt of this order.

The inspection if any, be given on a mutually agreed date.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 5th day of August. 2011

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