

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.92/SCIC/2009

Shri Kashinath Shetye,
R/o Bambino Building,
Alto Fondvem, Raibandar,
Tiswadi – Goa

... Appellant.

V/s.

1. The Public Information Officer,
Supt. Engineer, Circle I WRD,
Panaji - Goa
2. The Public Information Officer,
Supt. Engineer, (CPO), WRD,
Panaji – Goa
3. The Public Information Officer,
Ex. Engineer, Circle III WRD,
Margao – Goa
4. The Public Information Officer,
Supt. Engineer, CADA,
Margao – Goa
5. The Deemed Public Information Officer,
Ex. Engineer, Circle I WRD,
Panaji – Goa
6. The Deemed Public Information Officer,
Ex. Engineer (Div II), WRD, Margao – Goa.
7. The Deemed Public Information Officer,
Ex. Engineer (Div III), WRD, Ponda-Goa
8. The Deemed Public Information Officer,
Ex. Engineer (Div V), WRD,
Sanquelim, Goa
9. The Deemed Public Information Officer,
Ex. Engineer (Div IX), WRD, Margao – Goa
10. The Deemed Public Information Officer,
Ex. Engineer (Div X), WRD, Sanguem–Goa
11. The Deemed Public Information Officer,
Ex. Engineer (Div XI), WRD, Margao – Goa
12. The Deemed Public Information Officer,
Ex. Engineer (Div XII), WRD, Margao– Goa
13. The Deemed Public Information Officer,
Ex. Engineer (Div XIII), WRD, Margao–Goa
14. The Deemed Public Information Officer,
Ex. Engineer (Div XIV),WRD, Margao– Goa
15. The Deemed Public Information Officer,
Surveyor of Works, WRD, Panaji – Goa
16. The Deemed Public Information Officer,
Special Land Acquisition Officer,

- Margao-Goa
17. The Deemed Public Information Officer,
Assistant Accounts Officer, Panaji –Goa
 18. The Deemed Public Information Officer,
Special Land Acquisition Officer,
Karaswada, Bardez-Goa
 19. The Deemed Public Information Officer
The Principal Chief Engineer,
Panaji –Goa
 20. The First Appellate Authority,
The Chief Engineer,
Water Resources Department,
Junta House Panaji, Goa
- ... Respondents

Appellant present
Respondents absent
Adv. H. Naik for respondent present

J U D G M E N T
(27/07/2012)

1. The Appellant, Shri Kashinath Shetye, has filed the present appeal praying that the information as requested by the appellant may be furnished to him correctly, fully and free of cost as per Sec.7(6) without reserving any information to save any person; that records and proceedings of First Appeal be called; that action be taken on all S.P.I.O.s and A.P.I.Os for not providing information and inspection of records within stipulated time period of thirty days; that penalty be imposed on S.P.I.Os and A.P.I.Os as per Sec.20; that disciplinary proceedings be initiated and compensation of Rs.25,000/- be awarded to the appellant for detriment and harassment caused.

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

That the appellant, vide application dated 9/6/2009, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer(P.I.O.)/Electricity Department which was transferred to Dy. Director Administration W.R.D. and then the Dy. Director Administration W.R.D. transferred it to the remaining 19 S.P.I.O., W.R.D. That the application dated 9/6/2009 was complete in all respects and was

submitted in person. That the same was reluctantly accepted and transferred to W.R.D. That no reply has been furnished nor any inspection of records permitted and as such it amounts to deemed refusal under Sec.7(2) of the R.T.I. Act. That the Dy. Director of Administration erred in transferring the application under 6(3) of the R.T.I. Act. That the S.P.I.O. should have taken the recourse of Sec.5(4) and 5(5) of R.T.I. Act as it is only one Public Authority. Being not satisfied the appellant preferred an appeal before First Appellate Authority on 6/8/2009. That the appellant could not attend the appeal and that the F.A.A. dismissed the appeal without going into the merits which violates R.T.I. Act. Being aggrieved 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 respondents are on record. It is the case of the respondent No.1 that the request of the appellant was transferred by Dy. Director to 4 P.I.Os and 14 A.P.I.Os of Water Resources Department. The respondent No.1 denies the contents of para 3 and 4. According to respondent No.1 the appellant personally did not approach at any point of time for inspection of records. That the available information in respect of respondent No.7 was furnished to the appellant vide letter dated 7/9/2009 along with annexures. That only State P.I.O. of WRD can furnish the information with the assistance of additional P.I.Os and Assistant P.I.Os. That there are no designated deemed P.I.Os. The respondent No.1 denies the contents of para 7. According to respondent No.1, the appellant was absent on 3/9/2009 and 17/9/2009. The respondent No.1 denies the grounds set out in the Memo of Appeal. That the question of not allowing the inspection of records does not arise as the appellant never applied for inspection of records at any point of time. According to respondent No.1 relief prayed cannot be granted and that the appeal be dismissed with exemplary costs.

It is the case of respondent No.2 that the contents of paras 1 and 2 of Memo of Appeal are denied however it is submitted that

the said Dy. Director transferred it to 4 P.I.O.s and 14 A.P.I.Os of Water Resources Department. According to the respondent No.2 the appellant personally did not approach at any point of time for inspection of records before the respondent No.2. That available information in respect of respondent No.2 was furnished to the appellant vide letter dated 25/6/2009. The rest of reply is on similar lines of respondent No.1. According to respondent No.2 the question of not allowing the inspection of records does not arise as the appellant has never applied for inspection of records at any point of time. According to respondent No.2 the appeal is liable to be dismissed with exemplary costs.

The case of respondent No.3 is also similar to respondent No.1 and 2. In short it is the case of respondent No.3 that the said Dy. Director transferred the request to 4 P.I.Os and 14 A.P.I.Os of Water Resources Department. According to respondent No.3 the appellant personally did not approach at any point of time for inspection of records. That the available information in respect of the respondent was furnished to the appellant vide letter dated 9/7/2009 along with annexures. That appellant has never applied for inspection of records at any point of time. According to respondent No.3 the appeal is liable to be dismissed with exemplary costs.

The reply of respondent No.4 is also on similar lines. Hence I need not refer to the same in detail. However according to the respondent No.4 reply was furnished to the appellant under Certificate of Posting vide letter dated 6/7/2009; 18/8/2009, 20/8/2009 and 24/8/2009. That the question of not allowing the inspection of records at any point of time does not arise. According to respondent No.4 the appeal is liable to be dismissed.

The reply of respondent No.5 is also on the similar lines. So I need not reproduce the same herein. However according to respondent No.5 that available information was furnished to the appellant vide letter dated 1/7/2009. That no inspection was

sought at any point of time. According to respondent No.5, the appeal is liable to be dismissed with exemplary costs.

Respondent No.7, 8, 9 and 10 have filed the replies which are similar to the replies of the respondent No.1 to 5. Hence not repeated herein. According to respondent No.7 available information was furnished to the appellant vide letter dated 22/7/2009 alongwith annexures. According to respondent No.8 the available information in respect of respondent No.8 was furnished to the respondent No.4, the Public Information officer, Superintending Engineer, CADA, Gogol Margao, Goa by respondent No.8 Executive Engineer, Works Div.V Water Resources Department, Karapur, Tisk, Sanquelim, Goa vide office letter dated 7/8/2009 and 21/8/2009. That the question of not allowing the inspection of records does not arise as the appellant has never applied for inspection of records at any point of time. According to respondent No.8 the appeal is liable to be dismissed.

It is the case of respondent No.9 that the reply was furnished to the appellant under Certificate of Posting vide letter dated 9/7/2009. It is further the case of respondent No.9 that the appellant never approached for inspection of records at any point of time.

It is the case of respondent No.10 that the reply was furnished to the appellant under Certificate of Posting by the then respondent i.e. Shri A.S. Rane vide letter dated 13/7/2009 and the appellant was further reminded vide letter dated 13/8/2009 to collect the information from the office of respondent, however, appellant failed to collect the same. That no inspection of records was sought at any point of time. According to respondent No.10 the appeal is liable to be dismissed.

Respondent No.12, 13, 14 and 17 have filed the replies which are similar that is to say all the respondents have filed similar replies.

According to respondent No.12 reply was furnished to the appellant under Certificate of Posting vide letter dated 23/9/2009. That the appellant never personally approached for inspection at any point of time.

According to respondent No.13 reply was furnished to the appellant under Certificate of Posting vide letter dated 13/7/2009. That the appellant never personally approached for inspection records.

According to respondent No.14 the reply was furnished to the Superintending Engineer CADA, who is P.I.O., vide letter dated 17/8/2009 which was forwarded by Superintending Engineer CADA/P.I.O. to the appellant vide letter dated 19/20-8-2009 under Certificate of Posting on 20/8/2009. That the appellant never sought for inspection.

According to respondent NO.17 available information was furnished vide letter dated 17/7/2009. That the appellant never applied for inspection.

4. Heard the arguments. The appellant argued in person and the Ld. Adv. Smt. H. Naik argued on behalf of the respondent.

5. 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 seen that vide application dated 9/6/2009, the appellant who is as per application Junior Engineer, Electricity Department, sought certain information from the P.I.O., the Executive Engineer (Procurement) Electricity Department. Strangely it is a complaint-cum-application under Right to Information Act. By letter dated 19/6/2009 the Dy. Director of Administration and Asst. P.I.O. transferred this application to the Principal Chief Engineer P.W.D.

Altinho. It appears that the application dated 9/6/2009 was forwarded to the office of Dy. Director of Administration by the P.I.O. and Executive Engineer (Proc) under his letter dated 12/6/2009. According to the Complainant information was not furnished and hence he preferred First Appeal before F.A.A./respondent No.20 on 6/8/2009. By order dated 17/9/2009 the F.A.A. directed all the respondents to handover the available information to the appellant. It was also observed that since the appellant did not attend the hearing the appeal was dismissed. This appears to be a mistake as respondents were directed to furnish the information.

6. Respondent No.19 is the Principal Chief Engineer, PWD, Altinho, Panaji. In his reply dated 15/12/2009, the respondent No.19 states that the application of appellant was transferred to respondent No.19 under Sec.6(3) and that the same was already transferred to all the P.I.Os of PWD requesting them to furnish the information directly to the appellant. That the appeal is preferred by the appellant based on the order dated 17/9/2009 of F.A.A. of Water Resources Department and not the F.A.A. of P.W.D. in which the P.I.O. the Dy. Director of Administration, P.W.D. is not the party.

It appears to be true as First appeal was preferred before F.A.A./Chief Engineer, Water Resources Department.

7. Now it is to be seen whether the information is furnished.

It is seen that respondent No.1 furnished the information to the appellant vide letter dated 7/9/2009 alongwith annexures.

Respondent No.2 also furnished the available information to the appellant vide letter dated 25/6/2009. I have perused the letter dated 25/6/2009. As per the same, available information is furnished. Respondent No.3 furnished the available information to the appellant vide letter dated 9/7/2009 along with annexures. I

have gone through the same. From the same, it is seen that available information is furnished.

Respondent No.4 furnished the reply to the appellant under Certificate of Posting vide letter dated 6/7/2009; 18/8/2009; 20/8/2009 and 24/8/2009.

Respondent No.5 furnished the available information to the appellant vide letter dated 1/7/2009. In the reply the respondent No.5 informed the appellant that their office is occupying one block of P.W.D. Bldg. Complex at Patto, Panaji and the electricity bills of the complex are being paid by P.W.D. office. It was further informed that the details sought by appellant is not available with their office.

Respondent No.7 furnished the available information to the appellant vide office letter dated 22/7/2009 along with annexure. I have seen the letter dated 22/7/2009. In respect of point No.1 to 13 except 9 it was informed to the appellant that their office is provided office space in Govt. Bldg., opposite Court, Ponda and that the office complex was constructed by P.W.D. both civil and electrical works hence all details may kindly be obtained from concerned P.W.D. office.

Respondent No.8 submitted available information to respondent No.4/P.I.O.; Superintending Engineer, CADA, Gogol, Margao, Goa vide letter dated 7/8/2009 and 21/8/2009. Respondent No.9 furnished the reply to the appellant under Certificate of posting by letter dated 9/7/2009. I have perused the reply. It appears that available information is furnished. Copy of the reply was also sent to the Dy. Director of Administration, office of Chief Engineer, WRD, Panaji for information.

Respondent No.10 by letter dated 13/7/2009 requested the appellant to collect the information. It appears that appellant did not collect the same. Again by letter dated 13/8/2009 the

appellant was once again requested to collect the information. However appellant failed to collect the same.

Respondent No.12 has furnished the reply to the appellant by letter dated 23/9/2009. I have perused the copy of the same. As per the reply, the respondent No.12 has furnished the available information.

By reply dated 13/7/2009 the respondent No.13 has furnished the reply/information to the appellant. I have perused the copy along with annexures.

Respondent No.14 submitted the reply to the Superintending Engineer, CADA who is P.I.O. Vide letter dated 17/8/2009 which is forwarded by Superintending Engineer CADA/P.I.O. to the appellant vide letter dated 19/8/2009 under certificate of posting on 20/8/2009.

Respondent No.17 furnished the information to the appellant vide letter dated 17/7/2009. I have seen the copy of the reply on record. As per the same respondent No.17 informed the appellant that there was no information to disclose and that information treated as NIL.

It is thus seen that most of the information was furnished in the month of July, 2009. However the appellant preferred an appeal on 6/8/2009.

8. It is seen that information was in connection with the Electricity Department and therefore the original P.I.O. the Executive Engineer(Procurement) Electricity Department ought to have been in possession of the same. However, he transferred the request.

9. It was contended by the appellant that P.I.O. should have taken the recourse to Sec.5(4) and 5(5) of the R.T.I. Act.

Under Section 5(4) P.I.O. may seek assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

As all information required to be furnished may not be readily available with the P.I.O. the P.I.O. may seek the assistance from any other officer of the public authority as may be considered appropriate to enable him/her to discharge duties in proper way so that information is furnished within prescribed period. Thus the law establishes a right of the P.I.O. to have the assistance from concerned officers of public authority.

If the information is held at any other level of the same public authority P.I.O. can seek the same under Section 5(4) but if the information is not with the public authority of which he is P.I.O. he should refer to the concerned authority under Section 6(3)(ii).

In *Kishen Mirchandani v/s. Mumbai Port Trust* (F. No. CIC/AT/A/2009/000139, decided on 31.07.2009) it was observed that the provision of Section 5(4) cannot be read to mean that a CPIO receiving an R.T.I. application had only one course of action open to him, viz. collecting the information from all its sources and transmitting it to the applicant.

In *Vivek Sawhney v/s. Prime Minister's office, New Delhi* (CIC/WB/C/2009/000237 dt. 15.04.2009 decided on 22.01.2010) it is observed that it is not open to a citizen to place questions regarding every public authority before a single public authority unrelated directly thereto and then expect to get information in accordance with sub-Section (1) of Section 7.

10. It is pertinent to note here that sub-Section (1) of Section 6 expressly requires that a person who desires to obtain information under R.T.I. Act shall make a request alongwith the prescribed fee to the Public Information Officer of the concerned Public Authority specifying the particulars of information. Sub-Section (3) carves an

exception to the requirement of sub-Section (1). As per the same where a Public Authority, to whom an application for information is made, finds that information demanded is not with it but is held by some other authority, it is duty bound to transfer the application for information to the concerned authority under intimation to the applicant/information seeker. In my view sub-Section (3) of Section 6 cannot be read in isolation, sub-Section (1) of Section 6 being the main Section. The pure objective behind enacting this provision is perhaps to lessen the travails of an information seeker, lest he is lost in the labyrinth of procedural technicalities.

I have perused various rulings on the point. I need not reproduce the same herein. The rule of law now crystallized by various rulings is that application seeking information is to be made to the Public Information Officer of the concerned Department i.e. who may be in possession of requisite information.

11. Coming to the information sought, it is seen that respondent No.1, 2, 3, 4, 5, 7, 8 and 9 furnished the available information. So also respondent No.12, 13, 14 and 17 furnished the available information. Respondent No.10 called the appellant to collect the information but the appellant did not go.

Another aspect is regarding inspection. All the respondents state that no inspection was sought. It is also stated that appellant did not visit office for inspection.

It is to be noted here that in the main application inspection is sought. However since the request was transferred, it is possible there was some misunderstanding or lack of proper appreciation of the application.

Appellant on his part should note that under Sec.6(1) the request should be specific. The R.T.I. Act should not be stretched to such an extent that it includes everything under the hot sun.

12. Coming to the aspect of delay. The request is dated 9/6/2009. The respondent No.1 sent the reply by letter dated 7/9/2009. Apparently there is delay. Respondent No.4 sent one reply in time and other two on 18/8/2009 and 24/8/2009.

Respondent No.7 sent the reply on 22/7/2009, however, the original request was forwarded to him by letter dated 12/6/2009 which was subsequently received by him.

Respondent No.8 submitted the information to respondent No.4 on 7/8/2009 and 21/8/2009. Respondent No.12 submitted the reply on 23/9/2009. Again there is delay in furnishing the information. There is delay in respect of respondent No.14.

Rest of the information is furnished in time.

Admittedly there is delay in respect of some of the respondents in furnishing the information. However from the records, it is seen that the P.I.O. Electricity Department transferred the same to Dy. Director Administration who further transferred to the present respondents. It is also noticed that some respondent furnished information to the superior who in turn furnished to the appellant.

Penalty can be imposed only if there is no reasonable cause for not furnishing the information within the period of 30 days. Under Sec.20 of the R.T.I. Act the information Commission must satisfy itself that P.I.O. has without reasonable cause refused/not furnished information within specified time frame. The word "reasonable" has to be examined in the manner, which a normal person would consider it to be reasonable. In the factual matrix of this it would not be proper and fit to impose penalty on the respondent.

I have perused some of the rulings of C.I.C. on the point.

- (i) In Shri Surinder Pal (Advocate) Ludhiana *v/s*. P.I.O. O/o. Commissioner M.C. Ludhiana [2008]¹ ID 227 (SIC PG) it was observed as under:-

“Perusal of the contents of the affidavit dated 20.08.2007 filed by Sh. K. J. S. Kakkar, Medical Officer, M.C. Ludhiana does show that Respondent has been quite diligent in its efforts to procure, compile and deliver the information to the Complainant. We are satisfied that the delay in the delivery of information is neither willful nor deliberate. This is, therefore, not a fit case for the imposition of penalty under Section 20 of R.T.I. Act, 2005, or the award of any compensation to the Complainant

- (ii) In Brijesh Barthwal, Vikas Nagar, Lucknow *v/s* Geological Survey of India, Northern Region, Lucknow (Appeal No. CIC/AT/A/2006/00031 dated 10.07.2006) CPIO submitted that the delay was caused by the logistic of collecting the information from several sources, his absence from office on leave and lack of familiarity with the processes under the R.T.I. Act. The Commission observed that the P.I.O. could have kept the appellant periodically posted with the progress of the information gathering process. The Commission held that the reasons for delay seem to meet the test of “reasonable cause” under Section 20.

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

ORDER

Appeal is partly allowed. The respondents to give the inspection of documents/records to the appellant on a mutually agreed date but within 20 days from the date of receipt of this order.

Appellant to collect the information from the respondent No.10 and respondent No.10 to furnish the same as contended by respondent No.10. This should be completed within 20 days from the receipt of this order.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 27th day of July, 2012.

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