

GOA INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Appeal No. 55/2008

Shri. Allan Falleiro,
H. No. 400, Toleband,
Loutolim, Salcete – Goa. 403718

.....

Appellant.

V/s.

1. Public Information Officer,
The Hydrographic Surveyor,
Captain of Ports Department,
Panaji – Goa.
2. First Appellate Authority,
The Captain,
Captain of Ports Department,
Panaji – Goa.

.....

Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per A. Venkataratnam)

Dated: 29/09/2008.

Appellant in person.

Adv. K. L. Bhagat for both Respondents.

ORDER

The Appellant approached the Public Information Officer of the Captain of Ports Department, Respondent No. 1 herein for certain information on 4/4/2008. The Respondent No. 1 rejected the request. The reply rejecting the request was signed by the Asst. Public Information Officer and not by the Public Information Officer. On an appeal to the Respondent No. 2, an order was issued by the Respondent No. 2 directing the Respondent No. 1 to give complete information. Thereafter, Public Information Officer gave the information which was found to be not satisfactory by the Appellant who has approached this Commission for facilitating the furnishing of the complete and correct information and also requested to punish the "concerned person" for delay in providing the required information.

2. Notices were issued and the Appellant argued for himself. The

...2/-

learned Adv. K. L. Bhagat represented both the Respondents. The Appellant took objection for the appearance of the Government Counsel on behalf of the Respondents. His contention is that "the resources from the Government exchequer should not be wasted to defend corrupt officers who deliberately do not function/carry out their duties as required under the Right to Information Act, 2005" (for short the RTI Act). There is no bar in the RTI Act for the representation of the Public Information Officer and the first Appellate Authority by an Advocate. However, the objection of the Appellant is that the Government Counsel should not represent the Public Information Officer and the first Appellate Authority who are also Government servants. We do not find this argument a valid argument as it is for the appropriate Government to take a view as to who has to foot the bill of the legal expenses to defend the action/inaction of the officials entrusted with their original and appellate functions under the RTI Act. Accordingly, we reject the objection of the Appellant regarding the appearance of the Government Counsel to plead on behalf of the Respondents.

3. There is no doubt that the Asst. Public Information Officer has exceeded his jurisdiction in rejecting the request for information filed with the Public Information Officer under section 6 of the RTI Act as well as for not mentioning the reasons for rejection, the designation of the first Appellate Authority and the period of limitation as required under section 7(8) of the RTI Act. There is, therefore, no doubt that the initial rejection of the Asst. Public Information Officer is without jurisdiction and is bad in law. However, we find that it was already set aside by the first Appellate Authority himself though not stated in as many words when he directed the Respondent No. 1 to give "complete information". While complying with the order of the first Appellate Authority, the Public Information Officer, Respondent No. 1 herein, has given certain information which is now under challenge by the Appellant. It is, therefore, necessary to go into details of the request and reply furnished, though belatedly, to verify the contention of the Appellant.

4. The first request is about giving the certified copies of the documents stating that citizens should submit NOCs from three other authorities of the Government before a NOC is issued by the Captain of Ports under section 13(1) of the Indian Ports Act. In the first instance, the

Asst. Public Information Officer has directed the Appellant to approach the concerned Departments for the documents. In the second reply after the first Appellate Authority's order, the Public Information Officer has merely submitted the sections under which the NOC is issued to an applicant. We must mention here that we are not aware what is the NOC requested by the Appellant and denied by the Captain of Ports under section 13(1) of the Indian Ports Act. It was neither mentioned by the Appellant nor the Respondents. Be that as it may, it is not denied that the Captain of Ports is required to issue such a NOC to the Appellant and other citizens requesting for the same. The grievance of the Appellant is that he was denied such a NOC stating that he should first obtain NOCs from three other authorities namely Goa Coastal Zone Management Authority, Small Scale Industries unit and Goa State Pollution Control Board. It is also his grievance that another applicant by name M/s. Vijay Marine Services at Rassaim was issued such NOC without obtaining NOCs from the three authorities as mentioned above. With this background, the second reply now given by the Public Information Officer to the request, by merely submitting the provisions of the Indian Ports Act is incomplete and misleading reply. As the Captain of Ports is insisting a production of NOC from the other authorities before issuing his own NOC, he should justify his act for following such a procedure by issuing a copies of the instructions available with him, or state clearly that there are no such instructions. Directing the Appellant to go to the other authorities as well as citing merely the sections of the Indian Ports Act is misleading and incomplete information.

5. The second request is about the discrimination between his application and M/s. Vijay Marine Services and Dempo Shipyards. By his earlier reply, the Asst. Public Information Officer, simply rejected the reply as the query is outside the purview of the RTI Act. The second reply given now, however, mentions clearly that the parties were directed to furnish/obtain NOCs from the concerned authorities/departments before setting up workshops/yards and such stipulation is incorporated in the NOC itself. This reply is also misleading. The query of the Appellant is why the NOC from the three authorities were not insisted from other parties mentioned by him "before" issuing the conditional NOC by the Captain of Ports. The reply shows that the NOC was issued by the Department with a condition imposed on them to submit the NOC from other authorities before setting

up of workshops/yards. This means clearly that the NOC was issued though conditionally without having NOC of the three organizations by the Captain of Ports Department. However, the Appellant cannot ask the Public Information Officer to give reasons why such discriminatory action was taken by the public authorities in view of the order dated 3rd April, 2008 in Writ Petition No. 419/2007 of Hon'ble High Court of Bombay, Panaji Bench in case of Dr. Celsa Pinto Vs. Goa State Information Commission and another. Though the Respondent No. 1 is not under any obligation to reveal the reasons why the Department has followed different reasons in the case of Appellant and other applicants, he has to clearly state in as many words that the NOC was issued to the other parties in the first instance without having obtained the NOCs of the other Departments. This would bring out clearly the different approach followed in the case of Appellant's case.

6. The third request is about the powers and functions of the Dy. Captain of Ports while officiating as a Captain of Ports. The Public Information Officer has enclosed a leave sanction order to the Captain of Ports wherein the Dy. Captain of Ports was designated and authorized to official as Captain of Ports in addition to his own duties during the leave of Captain of Ports. This being the case, Dy. Captain of Ports automatically is vested with the powers, functions, duties and responsibilities of the Captain of Ports during the period he officiated as Captain of Ports. No powers need to be delegated to him by the Government, specifically. The request, therefore, stands answered completely.

6. We are not inclined to grant the request to punish the Public Information Officer as no case is made out as malafide.

7. With the above discussion, the appeal is partly allowed. The information regarding the points No. 1 and 2 mentioned above should be given to the Appellant within 15 days from the date of the order.

Announced in the open court on this 29th day of September, 2008.

Sd/-
(A. Venkataratnam)
State Chief Information Commissioner

Sd/-
(G. G. Kambli)
State Information Commissioner