

GOA INFORMATION COMMISSION

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

Appeal No. 68/2007-08/GU

Dr. U. A. Vinay Kumar,
Reader in Philosophy,
Goa University,
Taligao Plateau – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Registrar, Goa University,
Taligao Plateau – Goa.
2. First Appellate Authority,
The Hon'ble Vice Chancellor,
Goa University,
Taligao Plateau – Goa.

..... Respondents.

CORAM:

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

(Per G. G. Kambli)

Dated: 03/10/2008.

Adv. V. Naik for the Appellant.

Adv. Ms. Agni for the Respondents.

ORDER

The Commission by its order dated 18/01/2008 had directed the Respondents to provide the exact date on which the Respondent No. 2 i.e. first Appellate Authority took the decision and also to file a copy of the decision of the first Appellate Authority made on the first appeal filed by the Appellant herein on 5/02/2008. The Respondents challenged the said order of the Commission before the Hon'ble High Court of Bombay at Goa Bench in Writ Petition No. 64/2008. The Hon'ble High Court was pleased to stay the further proceedings of this Commission till the next date. The Hon'ble High Court thereafter by its order dated 10/07/2008 has held that it was not a fit case to interfere in the extraordinary jurisdiction as the Commission has sought some details in order to consider the objection raised by the Respondents.

2. Accordingly, hearing was fixed on 27/08/2008 which was adjourned

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to 17/09/2008 for production of documents and clarification of the date of the order by the Respondent No. 2. When the matter was taken up for hearing on 17/09/2008, the learned Advocate for the Respondents produced a Xerox copy of the letter dated 24/09/2007 issued by the Registrar/Public Information Officer and submitted that they have nothing to add or produce any more documents.

3. The letter which has now been produced by the learned Advocate for the Respondents was already considered by the Commission in its order dated 18/01/2008 and it was held that the said letter is not at all relevant for deciding preliminary objection raised by the Respondents. This letter is signed by the Respondent No. 1, Public Information Officer and it cannot be said to be an order of the first Appellate Authority. It is also not the communication of the order/decision of the first Appellate Authority. It is only the compliance of the direction of the first Appellate Authority. From the said letter it is also not clear whether it is a part or full compliance of the order/decision of the first Appellate Authority in the absence of the order/decision of the first Appellate Authority.

4. Section 19(3) of the Right to Information Act, 2005 (for short the Act) contemplates that a second appeal lies to the Commission against the decision of the first Appellate Authority within 90 days from the date on which the decision could have been made or was actually received. The contention of the learned Advocate for the Respondents is that the Appellant approached this Commission before expiry of 30 days available for the Respondent No. 2 to dispose off the first appeal. In this context, it is to be noted that the Appellant need not wait for the expiry of 30 days from the date of the filing of the appeal if the first Appellate Authority decides the appeal before expiry of 30 days. The cause of filing the second appeal will arise immediately after the appeal is decided by the first Appellate Authority or on the expiry of the period laid down in sub-section (6) of section 19 of the Act whichever is earlier. Therefore, the appeal can be filed before this Commission immediately after the decision is made by the first Appellate Authority. Therefore, the date on which the first Appellate Authority took the decision is relevant and not the date of the implementation of its order. With this view in the matter, the Commission has directed to produce a copy of the decision of the first Appellate Authority made on the appeal filed by the Appellant.

5. The learned Advocate for the Respondents in her application dated 1/07/2008 has stated that order passed by the first Appellate Authority is dated 24/09/2007. There is no other order passed by the Appellate Authority prior to 24/09/2007 or thereafter. But no copy of the order dated 24/09/2007 of the first Appellate Authority is produced before us, inspite of a direction by this Commission.

6. In this context, we would like to point out that the Respondent No. 1 vide his letter dated 25/10/2007 had forwarded two bills, one dated 22/09/2007 and second dated nil in continuation to their earlier letter dated 24/09/2007. This shows that the first Appellate Authority had given direction to provide coloured Xerox copies much before 24/09/2007 as otherwise there was no point in taking colour Xerox copy before the decision of the first Appellate Authority.

7. We fail to understand as to why the Respondents are hesitating to file a copy of the decision of the first Appellate Authority when the Respondents have clearly stated that in pursuance of the direction of the first Appellate Authority, the Appellant has been provided with the information. When the first Appellate Authority has already given the direction on the appeal filed by the Appellant before it, it is not understood as to why the Respondents have to withhold the disclosure of the direction of the first Appellate Authority to the Commission. The fact that the Respondents are not producing a copy of the decision/direction of the first Appellate Authority passed on the first appeal filed by the Appellant and the Xerox colour copies were taken prior to 24/09/2007 gives the Commission to draw an adverse inference that the Respondent No. 2 disposed off the first appeal before filing the present second appeal. We, therefore, overrule the preliminary objection raised by the Respondents that the present second appeal is premature.

8. Coming now to the merits of the case, the Appellant approached the Respondent No. 1 by his request dated 12/08/2007 seeking the following information under the Act.

- 1) Certified colour Xeroxed copies of all pages dated 09/08/2007 of the inward –outward register.
- 2) Preceding and subsequent entries of the entry No. 113.
- 3) A black and white copy of the purported letter and enclosed series of letters (R 1-4).

- 4) Inspection of original and signed purported letters along with its enclosures.

The Appellant also requested to provide the said information to him within 48 hours as according to the Appellant it pertains to his life and liberty.

9. The Respondent No. 1 filed the reply and stated that on receipt of the application of the Appellant, the Appellant was asked to clarify vide letter dated 16/08/2007 as there was inconsistency in seeking the information. The entry No. 113 is of 9/05/2006 whereas the information sought by the Appellant was regarding the pages dated 09/08/2007. The information pertaining to the entry No. 113 dated 09/05/2006 was already furnished to the Appellant under letter dated 11/08/2007. Instead of clarifying the matter the Appellant filed the first Appeal before the First Appellate Authority.

10. The Respondent No. 1 also stated that as per the direction of the First Appellate Authority colour Xerox copy has already been provided to the Appellant and regarding the other information of the preceding and subsequent pages the same can be provided subject to the payment of xerox charges and taxi fare by the Appellant. The Respondents state that there is no facility in the Goa University for taking colour xerox and therefore the colour Xerox copy was taken by deputing a personnel from the University to Panaji by engaging a taxi. The Respondent therefore submitted that the Appellant has to pay the taxi fare of Rs.150/- and colour xerox charges of Rs. 30/- in respect of the information which was already provided to the Appellant. The Respondent further submitted that the request of the Appellant was not rejected but only clarification was sought and therefore there was no cause of action to file the first appeal as he could not be said to be aggrieved person. The Appellant was also provided a xerox copy of the said entry No. 113 in black and white. The Respondent No. 1 has also produced before us the extract of entry No. 111 to 116 of the year 2006.

11. The Appellant specifically requested the information in colour form and as no such facility are available in the Goa University the Respondent No. 1 obtain the colour Xerox copies by deputing a personnel to Panaji by engaging taxi. Therefore, the Appellant has to pay the charges incurred

by the Respondents in providing the colour Xerox copies.

12. The Respondents stated in the reply that the Appellant has no cause for filing first appeal as his application was not rejected and he was asked to only clarify the inconsistency. We have gone through the application of the Appellant dated 12/08/2007 seeking information and we agree with the Respondents that there was inconsistency regarding the date. Therefore, the Appellant ought to have clarified the matter rather than filing the first appeal. However, this point ought to have been agitated before first Appellate Authority. Now that the first Appellate Authority has already decided the first appeal, the Respondents cannot raise this before this Commission.

13. As stated by the Respondents the colour Xerox copies of the entry dated 09/5/2006 has already been provided to the Appellant as per direction of the first Appellate Authority. We have no benefit of scrutinizing the order of the first Appellate Authority as regards to its findings on the other request of the Appellant regarding the providing of the copies of the preceding and subsequent entries to entry No. 113 and points No. 3 and 4 of the application. The Respondents have also not claimed any exemption for the disclosure of this information to the Appellant. On the other hand, the Respondent No. 1 in his reply has stated the information regarding the preceding and subsequent pages of entry No. 113 could be provided on payment of the charges.

14. In the circumstances, we partly allow the appeal and direct the Respondent No. 1 to provide the remaining information on points No. 3 and 4 and the copies of the preceding and subsequent entries to entry No. 113 on payment of charges by the Appellant within two weeks. We also direct the Appellant to pay the charges of Rs.180/- being taxi fare of Rs.150/- and Rs.30/- towards colour Xeroxing.

Pronounced in the open court on this 3rd day of October, 2008.

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

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

