

GOA INFORMATION COMMISSION

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

Appeal No. 79/2008

Shri. Manhoar Parrikar,
Hon'ble Leader of Opposition,
Goa State Assembly Complex,
Porvorim, Bardez - Goa.

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Appellant.

V/s.

1. Public Information Officer,
Mr. N. B. Subhedar,
The Under Secretary, Legislature,
Goa Legislative Assembly Complex,
Porvorim, Bardez – Goa.
2. First Appellate Authority,
Mr. R. Kothandaraman,
The Secretary,
Goa Legislative Assembly Complex,
Porvorim, Bardez – Goa.

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Respondents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 22/10/2008.

Adv. D. Lawande for the Appellant.

Both Respondents in person.

ORDER

An interesting question raised in this second appeal filed by the Appellant is whether the Public Information Officer, the Respondent No. 1 herein, can reject an application seeking information under the Right to Information Act, 2005 (RTI Act for short) citing some provisions of rules/law other than the RTI Act or the rules framed thereunder. The brief facts are as follows:

2. The Appellant, who is the leader of the opposition in the Goa Legislative Assembly, requested the Respondent No. 1 for certain information on 19/03/2008 under section 6 of the RTI Act. The request for information is about furnishing "all the notings leading to the decision of disallowing the notice of motion for removal of Hon'ble Speaker conveyed vide letter No. LA/Leg/R/SP/08/3736 dated 13th March, 2008." The

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Respondent No. 1 who is the Public Information Officer, rejected the request by a letter dated 9/4/2008. The letter of rejection stated "I am directed to state that your request has been rejected in view of the privileged protection offered to such documents under Rule 296 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly. The said Rule 296 has predominance over RTI Act in as much as it has not been repealed by section 22 of the Right to Information Act, 2005."

3. Against this rejection, the Appellant moved his first appeal to the first Appellate Authority, the Respondent No. 2 herein, on 8/5/2008 on the grounds mentioned therein. The first Appellate Authority by his order dated 15/05/2008 (hereafter referred to as the impugned order) rejected the first appeal. He did not offer any opportunity of personal hearing to the Appellant. In his appellate order, he maintained that the Rule 296 of the Rules of Business of Assembly (hereinafter referred to as Business Rules) is not inconsistent with section 22 of the RTI Act. He also made a distinction between parliamentary law and constitutional law classifying the RTI Act as parliamentary law and Rules of the Conduct of Business of Legislative Assembly as constitutional law. According to him, the rules are not overridden by the RTI Act and the information requested by the Appellant has to be sought only under those rules. Thereafter, he went on to add that the appeal filed by the Appellant is rejected "to the extent adjudicated above". His "adjudication" is with respect to three grounds raised in the first appeal memo at paras 2(a), (b) and (c). There are ten other grounds of appeal from 2(d) to 2(m). Nothing is mentioned about them implying that either they are accepted or not "adjudicated" yet. Ultimately, the first Appellate Authority has not made it clear that whether he has partly allowed or partly rejected or completely rejected it, because of his adjudication on only three grounds. As the Appellant did not get the information from the Public Information Officer even after the first Appellate Authority's order, he has moved the present second appeal on the grounds mentioned therein.

4. Notices were issued to all the parties and the learned Adv. D. Lawande represented the Appellant whereas the first Appellate Authority argued for himself. The Public Information Officer was present and of course did not argue in defence of his order of rejection of the request.

5. One of the important grounds taken by the Appellant is that he was not heard and was not given any opportunity to state his case. He, thereafter, went on to assail the appellate order on various other grounds. The appropriate Government has framed the rules in exercise of the powers vested in it under section 27 of the RTI Act, called the Goa State Information Commission (Appeal Procedure) Rules, 2006, hereinafter referred to as the Appeal Procedure Rules. These are applicable to the procedure in cases before the Goa Information Commission. However, the Commission held the view that the same rules have to be followed, as far as possible, by the first Appellate Authority as well. Under these rules, an opportunity for personal hearing of the Complainant/Appellant has to be given compulsorily. It is for the Appellant to choose to remain present or not. Unlike in civil matters, no appeal can be dismissed for default of appearance of the Appellant. Besides, the principles of natural justice require that the Appellant who has a grievance against the Public Information Officer's order ought to be heard in person or through his legally constituted attorney. Though a limit of 30 days time is given under the RTI Act for the first Appellate Authority to dispose off the first appeal, it can be extended upto 45 days for reasons to be recorded in writing. In the present case, the Respondent No. 2 has decided the first appeal in about a week after filing of the first appeal. No reasons were given why the personal hearing could not be given. On this point alone, the appeal succeeds and the impugned order has to be set aside.

6. However, even on merits, we find that the impugned order has to be set aside. The Respondent No. 2 did not decide the appeal under the provisions of the RTI Act at all. When an application/appeal is made under the provisions of the RTI Act, it is for the Public Information Officer/first Appellate Authority to take their own decisions without referring to any higher authority. Again, as they are quasi-judicial authorities, they have to pass their orders of rejection of the information with valid reasons. The grounds for refusal should be found only from the RTI Act and not elsewhere. What we find in the "impugned order" is that not only an opportunity was not given to the Appellant to present his case, but the appeal was rejected as the procedure prescribed under Rule 296 of the Assembly Procedure Rules are not followed by the Appellant. The argument taken by the Appellate Authority for doing so is that the request for the information has to be sought under the Rule 296 because it

pertains to the Business of the House and that the said Rules are not inconsistent with the RTI Act. There is a fallacy in the argument. Firstly, the question of consistency or inconsistency does not arise, as the request for information has to be dealt with as provided under section 7 of the RTI Act. If the requested information cannot be disclosed it should be rejected only on grounds mentioned in sections 8, 9 and/ or section 11 of the RTI Act. The fact that the Appellant has sought the information under the RTI Act, it has to be construed that the Appellant applied for the information as a citizen and not as a member of the Legislative Assembly. The RTI Act confers the right on the citizen to seek the information held by the public authority which is not specifically exempted under the RTI Act. We are not aware whether any citizens have an access to the records of the Goa Legislative Assembly under Rule 296 of the Procedure Rules. All we can say is that even if a citizen has an option to obtain information under any rule/law other than RTI Act and also the RTI Act, it is for the citizen to choose which option to exercise. He cannot be compelled to adopt only a particular course of action. The Appellant applied for the information under the RTI Act and his request has to be considered only under the Act. Therefore, the rejection of the request has to be taken only under the RTI Act and we find that this is not done by either the Public Information Officer or the first Appellate Authority. Hence, the impugned order is liable to set aside and is hereby set aside.

7. Even after setting aside the impugned order, we cannot automatically grant the prayer of the Appellant to provide the information to the Appellant as sought by him by his letter dated 19/03/2008. This is because we cannot substitute our satisfaction with that of the Public Information Officer or that of the first Appellate Authority. Pending the decision by the first Appellate Authority under the provisions of the RTI Act, the Commission cannot proceed further as it amounts predetermining of the issue. We make it clear that the Commission has not expressed any opinion on any substantial issues raised during the course of arguments. All the issues are left for the first Appellate Authority to decide the first appeal under the RTI Act after giving an opportunity for personal hearing to the Appellant. As already sufficient time has elapsed, the decision should be taken by the first Appellate Authority within next one month.

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8. For the same reasons cited, the letter cum order dated 9/4/2008 of the Respondent No. 1 is also set aside. The second appeal is, therefore, disposed off accordingly.

Pronounced in the open court on this 22nd day of October, 2008.

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

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