

GOA STATE INFORMATION COMMISSION

Ground Floor, “Shrama Shakti Bhavan,” Patto Plaza, Panaji.
Appeal No. 187/SIC/2008

Smt. Sushma V. Karapurkar
H. No. 46, Karaswada, Mapusa
Bardez – Goa – 403 526 ...Appellant

V/s.

1. The Public Information Officer
The Mamlatdar of Bardez Taluka
Government Building, 2nd Floor
Mapusa - Goa ...Respondent No.1

2. The First Appellate Authority
O/o. Dy. Collector of Mapusa
Government Building Complex
1st Floor, Mapusa - Goa ...Respondent No. 2

CORAM:
Shri G. G. Kambli
State Information Commissioner

(Per G. G. Kambli)

Dated: 11.12.2008

Appellant in person.

Respondent No. 1 is represented by Shri Kishore Naik, UDC, from the Office of the Respondent No. 1.

Respondent No. 2 is represented by Kum. Shama Nagvenkar, A.K. from the Office of the Respondent No. 2.

J U D G M E N T

This is a second appeal filed by the Appellant under sub-section (3) of section 19 of the Right to Information Act, 2005 (for short “The Act”).

2. The case of the Appellant is that the Appellant approached the Respondent No. 1 with a request dated 27.06.2008 to provide the following information :

i) All the documents submitted by said Nalini to procure/obtain the ration card No. BAR/70/557/Map. and EPIC No. CPQ 0629899.

ii) Report of the Talathi of Mapusa submitted to the Mamlatdar of Bardez by the Talathi.

The Appellant also requested that the said information be provided within 48 hours as it concerns to the life and liberty in terms of the first proviso to sub-section (1) of section 7 of the Act.

2. As the Appellant did not receive any response from the Respondent No. 1, the Appellant preferred an appeal before the First Appellate Authority on 17.07.2008, i.e. the Respondent No. 2 herein. The Respondent No. 2 also did not dispose off the first appeal within the stipulated period and, therefore, the Appellant has filed the present appeal praying, inter alia that (a) the Respondent No. 1 be directed to furnish the information free of cost; (b) to direct the Respondent No. 1 to compensate the Appellant to Rs. 1,500/- as against the loss and other detriments suffered; (c) to impose a penalty of Rs. 21,000/- @ Rs. 250/- per day on the Respondent No. 1 u/s. 20 of the Act.

3. The notices were issued to both the Respondents. The Respondent No. 1 was also directed to show cause as to why the prayers of the Appellant for imposition of penalty u/s. 20 should not be allowed. Both the Respondents filed their replies. The Appellant also filed the written submissions.

4. The Respondent No. 1 submitted that on receipt of the application dated 27.06.2008 of the Appellant, the Respondent No. 1 vide memorandum dated 07.07.2008 referred the matter to Civil Supplies Inspector to make available the said information. The Respondent No. 1 has also stated that the Appellant made one more application dated 08.07.2008 which is not subject matter of the present second appeal. The Respondent No. 1 has made several averments in respect of the second application dated 08.07.2008 which is not at all relevant in the present second appeal and, therefore, I am ignoring all such statements made by the Respondent No. 1 in respect of the second application.

5. The Respondent No. 1 in his reply has annexed Xerox copies of the letter dated 26.08.2008 addressed to the Appellant, letter dated 25.08.2008 from the Inspector of the Office of the Mamlatdar, Bardez, Civil Supplies Wing, memorandum dated 11.07.2008 and the application dated 05.07.2008 of the Appellant. All these relate to the application dated 08.07.2008 of the Appellant and, therefore, they are irrelevant in the present case. Except the memorandum dated 07.07.2008, the Respondent No. 1 has not produced or relied upon any other documents. The Respondent No. 1 has not produced any documents to show that the application dated 27.06.2008 has been disposed off by the Respondent No. 1 till this date. Therefore, the Respondent No. 1 has not yet provided any information nor given any reply to the application dated 27.06.2008.

6. The Respondent No. 1 was also directed to show cause as to why the prayers of the Appellant for the imposition of penalty under section 20 of the Act should not be granted. The Respondent No. 1 has not explained or justified for not granting the prayers of the Appellant especially for imposition of the penalty of Respondent No. 1.

7. The Appellant in the written submissions has submitted that the Respondent No. 1 till the date of filing the written submissions has not provided any information on the application dated 27.06.2008. The Appellant has also submitted that the Respondent No. 1 has tried to confuse and unnecessarily made a reference to the second application dated 08.07.2008 which is irrelevant and not the subject matter of the second appeal. The Appellant in his written submissions has also submitted that the Respondent No. 1 has submitted false information stating that the EPIC card was issued on 29.01.2007 and not in 2002. The Appellant in support of his written submission has produced a Xerox copy of the said EPIC card.

8. Coming now to the reply filed by the Respondent No. 2, the Respondent No. 2 has submitted that the appeal filed by the Appellant was dismissed for default of the appearance of the Appellant on 06.11.2008 as the Appellant inspite of the opportunities did not remain present for the hearing. The appeal was filed before the First Appellate Authority on 17.07.2008. The time limit for disposal of the first appeal by the First Appellate Authority is 30 days which can be extended by the First Appellate Authority by another 15 days for the reasons to be recorded in writing, in terms of the provisions of sub-section (6) of section 19 of the Act. On perusing the proceeding sheet of the First Appellate Authority, it is seen that the hearings were adjourned on number of occasions by the First Appellate Authority and no reasons are recorded as to why the appeal could not be disposed off within 30 days period.

9. The final order is passed by the Respondent No. 2 dismissing the appeal for default of the appearance on 06.11.2008 i.e. after 112 days as against the period of 30 days laid down in sub-section (6) of section 19 of the Act. Thus, there has been inordinate and unexplained delay in disposing the first appeal by the First Appellate Authority. It is also pertinent to note that the second appeal before this Commission was filed on 21.10.2008 and notice thereof was issued to both the Respondents on 31.10.2008. Being so, the First Appellate Authority woke up only after the second appeal was filed before the Commission.

10. As stated above, the First Appellate Authority has dismissed the appeal after 112 days for the default of the appearance of the Appellant. This Commission in a series of cases has held that the First Appellate Authority should follow the procedure laid down for the disposal of the second appeal by the Commission in the Goa State Information Commission (Appeals Procedure) Rules, 2005, as far as possible pertaining to the attendance of the Appellants. In terms of rule 7(2) of the said Rules, it is not compulsory on the part of the Appellant to remain present for the hearing before the Commission

but optional. The Act does not empower the First Appellate Authority to dismiss the appeal for the default of the appearance of the Appellant. The Respondent No. 2 should also note that the Act is a beneficial legislation and the Respondent No. 2 ought not to have dismissed the appeal for default of the appearance of the Appellant and that too after a long delay and expiry of the period laid down in section 19(6) of the Act.

11. The Respondent No. 2 has, therefore, not acted diligently and in the spirit of the Act. The Respondent No. 2 should note that the appeals filed u/s. 19(1) of the Act are to be disposed off by the First Appellate Authority within 30 days which can be extended by another 15 days for the reasons to be recorded in writing. The Respondent No. 2 has miserably failed to adhere to the provisions of the Act. In such circumstances, the order dated 06.11.2008 passed by the Respondent No. 2 in appeal No. 22/12/2008/SVK/RTI/DC/08 deserves to be quashed and set aside.

12. The Appellant had submitted that the Respondent No. 1 has deliberately withheld the disclosure of the information sought by the Appellant vide application dated 27.06.2008 and tried to mislead the Appellant as well as this Commission by unnecessarily making a reference to the second application dated 08.07.2008. The first appeal filed by the Appellant before the Respondent No. 2 was also in respect of the application dated 27.06.2008 and not of 08.07.2008. I am fully in agreement with the Appellant that the Respondent No. 1 has tried to mislead this Commission by unnecessarily making a reference to a separate application of the Appellant dated 08.07.2008 which is not the subject matter of the appeal before the First Appellate Authority nor the subject of the second appeal before this Commission.

13. In terms of the provisions of sub-section (1) of section 7 of the Act, the Public Information Officer has to provide the information to the information seeker as expeditiously as possible and in any case within 30 days of the receipt of the request. In the instant case, the

application is dated 27.06.2008 and, therefore, as on date 167 days have been passed from making the request, yet the Respondent No. 1 has neither provided the information to the Appellant nor given the reasons for non disclosure of the information. Further, as per the provisions of sub-section (5) of section 19 of the Act, the onus to prove that the denial of request was justified lies on the Public Information Officer before this Commission. The Respondent No. 1 has failed to discharge his burden before this Commission to justify his omission. In spite of the opportunity given by this Commission, the Respondent No. 1 has not given any justification or explanation for the non disclosure of the information. That apart, the Respondent No. 1 in his reply filed before this Commission has made a false statement that the EPIC card was issued in the year 2002 during the intensive photography campaign whereas the Appellant has brought on record and also produced the Xerox copy of the EPIC card issued on 29.01.2007. Therefore, the Respondent No. 1 has not acted diligently and withheld the disclosure of the information malafidely. Being so, the Respondent No. 1 is responsible and liable for the imposition of the penalty under section 20 of the Act.

14. The Appellant has also prayed for awarding the compensation of Rs. 1500/- to her. It will be seen that in spite of the long delay of 167 days, the Appellant has not been provided with the information nor the Respondents have given reasons for non disclosure of the information. The Respondent No. 2 has held nine hearings and ultimately dismissed the case for default of the appearance of the Appellant as can be seen from the proceeding sheet of the Respondent No. 2. Here again, the Respondent No. 2 has taken a long time thereby causing hardships and detriments to the Appellant. This being the position, the Appellant is entitled to the compensation in terms of the provisions of sub-section (8) of section 19 of the Act.

15. The Respondent No. 1 had issued the memorandum to the Civil Supplies Inspector on 07.07.2008 asking him to furnish the information within five days. It is not brought on record whether this

memorandum was received by the Civil Supplies Inspector or the Civil Supplies Inspector has responded to the said memorandum. It is, therefore, necessary to issue the notice to the Civil Supplies Inspector under sub-section (4) and (5) of section 5 of the Act. In view of the above, following order is passed:

ORDER

The appeal is allowed and the order dated 06.11.2008 passed by the Respondent No. 2 in appeal No. 22/12/2008/SVK/RTI/DC/08 is hereby quashed and set aside.

ii). The Respondent No. 1 is directed to provide information to the Appellant within one week from the date of this order as per the request dated 27.06.2008 of the Appellant and submit the compliance report to the Commission on 29.12.2008 at 11:00am.

iii). The decision on the imposition of the penalty on the Respondent No. 1 is deferred till the complete and correct information is provided to the Appellant.

iv). Similarly, the decision for awarding the compensation to the Appellant is also deferred till the complete information is provided to the Appellant.

v). The Respondent No. 1 is directed to produce the documents to prove that the memorandum dated 07.07.2008 was served on the Civil Supplies Inspector, on the next date of the hearing.

vi). The Civil Supplies Inspector, Shri Naresh Phadte attached to the Office of the Mamlatdar, Bardez, Civil Supplies Wing, is hereby directed to show cause as to why he should not be treated as a Public Information Officer in terms of the provisions of sub-sections (4) and (5) of section 5 of the Act for not providing the information to the Respondent No.1, on 29.12.2008 at 11:00am.

vii). The Respondent No. 1 is also directed to submit the records and proceedings in respect of the application dated 27.06.2008 of the Appellant so as to reach this Commission on or before 23.12.2008.

viii). The case to come up for further hearing on 29.12.2008 at 11:00am.

Pronounced in the open Court on this 11th day of December 2008.

Sd/-
(G. G. KAMBLI)
STATE INFORMATION COMMISSIONER

