

## **GOA INFORMATION COMMISSION**

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

Appeal No. 205/SCIC/2008

Shri. Kashinath Shetye,  
Bambino Building, Alto Fondvem,  
Ribandar, Tiswadi – Goa.

..... Appellant.

V/s.

1. Public Information Officer,  
The Chief Officer,  
Ponda Municipal Council,  
Ponda – Goa.
2. First Appellate Authority,  
The Director,  
Directorate of Municipal Administration,  
Panaji - Goa.

..... Respondents.

### **CORAM:**

Shri A. Venkataratnam  
State Chief Information Commissioner

(Per A. Venkataratnam)

Dated: 29/01/2009.

Appellant in person.

Both the Respondents absent.

### **ORDER**

This order disposes off the second appeal filed by the Appellant against the non-implementation of the order dated 7/11/2008 of the First Appellate Authority, Respondent No. 2 herein. Notices were issued. The Appellant argued for himself and the Public Information Officer was remained absent. The background of the matter is that by request dated 22/09/2008, the Appellant has applied for information on 10 points under Right to Information Act, 2005 (RTI Act for short) to the Public Information Officer, Dy. Director of Municipal Administration, Panaji - Goa. This request is in respect of all the Municipal Councils and the Corporation of City of Panaji in Goa. As the Dy. Director of Municipal Administration is not the Public Information Officer holding all the information about all the Municipal Councils in Goa, she has transferred the request to all the Municipal Councils by a letter of the same date which was received by the Chief Officer on 24/09/2008. The information is about movable handcarts, stalls, Kiosks, Milk Booths in the Municipal Council jurisdiction and the various licences issued by the Municipal Councils as well as the

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certified copies of the documents, licences issued by other authorities like Food and Drugs Administration, Electricity Department. The Appellant has requested the information to be collected from all the Municipal Councils and also requested for inspection of all the files.

2. The Appellant during the course of his arguments mentioned that information given to him is late and is incomplete and that the imposition of penalty under section 20 for the delay is mandatory. He has cited the case recently decided by the Division Bench of Bombay High Court in the case Criminal Misc. Application No. 217/2007 in Writ Petition No. 982/07 and a Criminal Misc. Application No. 219/2007 in Writ Petition No. 2031/07 in the case of Sandeep Rammilan Shukla, Mumbai V/s. the State of Maharashtra and others. The case is not yet reported in any law reported and the Appellant has read out from a copy of the judgement available with him the relevant provisions of the order dated 8/10/2008. He particularly drew my attention to para No. 25 at page 33 interpreting that the word "shall" whenever occurs in any legislation should be taken as mandatory duty to implement those provisions and it differs from the word "may" which is only directory. It will be necessary to quote section 20(1) of the RTI Act to dispose off the argument of the Appellant.

Section 20. Penalties.----- "(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.”

3. It can be seen therefrom that section 20 consist of two sub-sections. I am concerned with sub-section (1) which deals with the imposition of penalty on the Public Information Officer. Sub-section (2) of section 20 deals with the recommendation of the disciplinary action against the Public Information Officer. The sub-section itself mentions six circumstances under which the Public Information Officer can be punished. These are (i) when the Public Information Officer refuses to receive an application for information; or (ii) does not furnish information within the time specified under sub-section (1) of section 7; or (iii) malafidely denies the request for information; or (iv) knowingly gives incorrect, incomplete or misleading information; or (v) destroys the information which was subject of request; or (vi) obstructs in any manner in furnishing the information. The case of the Appellant is that the information was not given in time, though a part information was given after the first appeal is filed, the information is incomplete. Sub-section (1) further directs that “it (State Information Commission in this case) shall impose a penalty of Rs.250/- each day .....”. It is this sentence which is emphasized by the Appellant requesting for the imposition of penalty in view of the interpretation given by the Bombay High Court cited supra.

4. Sub-section (1) of section 20 not only mentions the six circumstances under which the penalty shall be imposed, it also mentions the mandatory procedure before penalties imposed. Firstly, it contains two provisos namely, the first proviso regarding giving a reasonable opportunity of hearing to the Public Information Officer before any penalty is imposed on him and secondly, shifting the burden of proof to the Public Information Officer as per second proviso to the sub-section (1) of section 20. Further, the main body of sub-section (1) of section 20 itself mentions that the penalty shall be imposed only when the Commission at the time of deciding any complaint or appeal “is of the opinion”. Again, the opinion has to be formed by the Commission before issuing the opportunity to the Public Information Officer to explain his conduct that the Public Information Officer has acted malafidely and without any

reasonable cause in the manner in which was mentioned in the six circumstances mentioned above. Therefore, the citation quoted by the Appellant regarding the mandatory "shall" impose penalty is qualified by other provisions in sub-section itself. It is the discretion of the Commission to proceed further with the prayer for imposition of the penalty. I find that the Appellant has not made out any case for starting penalty proceedings against the Chief Officer of Ponda Municipal Council.

5. Further, as already pointed out by the Chief Officer whatever information available was sent to the Appellant though there was no direct request to them by the Appellant. The RTI Act does not envisage collection of information from number of Public Information Officers of different public authorities by a central Department, like Director of Municipal Administration and furnishing it to the citizens. Each Municipal Council is a separate public authority by itself and therefore, the provisions of sub-section (3) of section 6 of the RTI Act regarding transfer of request application by one public authority to another public authority is not applicable in this case. It is a different matter that though the Appellant did not approach him individually and separately he has given the information. But for the same reason to start penalty proceedings against him is totally outside the scope of section 20(1) of the RTI Act.

6. For the reasons mentioned above, the appeal is dismissed.

Announced in the open court on this 29<sup>th</sup> day of January, 2009.

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



