

GOA INFORMATION COMMISSION

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

Appeal No. 209/SCIC/2008

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

..... Appellant.

V/s.

1. Shri. Agnelo A. Fernandes,
The Chief Officer &
Public Information Officer,
Cuncolim Municipal Council,
Cuncolim – Goa.
2. First Appellate Authority,
The Director,
Directorate of Municipal Administration,
Panaji - Goa.

..... Respondents.

Appellant in person. Respondent No. 1 in person. Respondent No. 2 absent.

Appeal No. 211/SCIC/2008

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

..... Appellant.

V/s.

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

..... Respondents.

Appellant in person. Shri. Jayesh Kalangutkar, APIO, authorized representative for Respondent No. 1 present. Respondent No. 2 absent.

Appeal No. 212/SCIC/2008

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

..... Appellant.

V/s.

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

..... Respondents.

Appellant in person. Respondent No.1 in person. Respondent No.2 absent.

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Appeal No. 213/SCIC/2008

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

..... Appellant.

V/s.

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

..... Respondents.

Appellant in person. Smt. A. Fatima D'Souza, Head Clerk/APIO,
authorized representative for Respondent No. 1 present. Respondent No. 2
absent.

Appeal No. 220/SCIC/2008

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

..... Appellant.

V/s.

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

..... Respondents.

Appellant in person. Respondent No.1 absent. Respondent No. 2
absent.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner

(Per A. Venkataratnam)

Dated: 06/02/2009.

ORDER

All the above 5 cases are taken up together for orders as the
Appellant is common and also request for information is identical. Briefly
stated the facts are that the Appellant by his request dated 22/09/2008
applied for information on 10 points under the Right to Information Act,
2005 (RTI Act for short) to the Public Information Officer, Dy. Director of

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Municipal Administration, Panaji - Goa. There is no such officer in the Directorate of Municipal Administration. The Public Information Officer of that Department, Additional Director of Municipal Administration, has forwarded this common requested dated 22/09/2008 to all the Municipal Councils and the Corporation of City of Panaji with a request to give the information to the Appellant directly. The information is about movable handcarts, stalls, Kiosks, Milk Booths etc. in the jurisdiction of the various Municipal Councils. The Appellant not only wanted certain documents pertaining to all the Municipal Councils but also wanted to inspect the same. It is his grievance that no information was given to him within statutory time period provided to Public Information Officer under the RTI Act. When he approached the First Appellate Authority, Respondent No. 2 herein, some of the Councils has given the information belatedly. However, the information was not to his satisfaction. Meanwhile, an order dated 7/11/2008 was passed by the First Appellate Authority. It is also the case of the Appellant that this order is not complied with by all the Municipal Councils.

2. Notices were issued in all the cases and the representatives of the Municipal Councils were present as mentioned above except in case of Canacona Municipal Council.

3. The present second appeals dated 11th November, 2008 were filed against all the above Municipal Councils and notices were served on them.

4. The Public Information Officer, Cuncolim Municipal Council stated that the reply was already given. In the case of the Sanquelim Municipal Council, the information was given. The Public Information Officer of Curchorem Municipal Council has informed the Appellant to pay Rs.76/- and collect the information but the Appellant did not collect it. The Bicholim Municipal Council and Canacona Municipal Council stated that the information was already given.

5. The Appellant, on the other hand, contended that the information given was insufficient and in any case was given only after the First Appellate Authority has passed the orders and for the delay and insufficient information, the respective Public Information Officers have to be compulsorily punished under section 20 of the RTI Act. He has also

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quoted a case recently decided by the Division Bench of Bombay High Court in the 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 judgment is neither reported in any law journal nor a copy was given to me. It is the case of the Appellant that wherever the word "shall", occurs in any legislation, it is the mandatory duty to implement those provisions as opposed to the word "may" which is only directory. As it has been stated under section 20(1) of the RTI Act that the Public Information Officer shall be imposed the penalty if the Public Information Officer (i) 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 the subject of request; or (vi) obstructs in any manner in furnishing the information. The detailed provisions of this section and its implementations were already discussed by me in Appeal No. 204/SCIC/2008 and Appeal No. 205/SCIC/2008. However, suffice it to say here that, no doubt, the law enjoins the imposition of penalty in the above mentioned six circumstances and also puts the burden of proving that the Public Information Officer has acted diligently and imposing the penalty on the Public Information Officer himself. However, this provision is subject to further provisions in the same sub-section (1) of section 20. The sub-section (1) of section 20 itself says that the State Information Commission has to initially form an opinion that the Public Information Officer has acted without any reasonable cause in the above listed six circumstances. Further, the Public Information Officer has to be afforded an opportunity to state his case. Read together and harmoniously, the entire sub-section (1) of section 20, simply the word "shall" mentioned therein does not mandate the compulsory imposition of penalty in each and every case. Where any such malafides is attributed to the Public Information Officer, the Commission has to apply its mind into the circumstances obtaining in each case and only then should start the process of levying penalty on the Public Information Officer. I, therefore, am not able to accept that the interpretation of the Hon'ble High Court of Bombay is applicable in the

cases before me, even without reading the judgment. The circumstances in that case may be different. The request for imposition of penalty by the Appellant on the Public Information Officer for giving delayed and incomplete information also falls in its face because the requests are not addressed to the Public Information Officers themselves at all, in the first instance. As mentioned above, the requests were made to another Public Information Officer who is not concerned with all the 5 public authorities mentioned above. No doubt, the office of the Directorate of Municipal Administration presided over by the Respondent No. 2 has administrative and some kind of supervisory control over all the Municipal Councils and the Corporation of City of Panaji. This, however, does not mean that he has also been entrusted with the job of getting the information from all the Municipal Councils at the request of the citizen only in order to give a consolidated reply to the citizens. Therefore, the request for the imposition of penalty is rejected.

6. As regards the grievances of Appellant regarding the incorrect or insufficient replies, the Appellant did not point out what are the specific instances in which the Public Information Officers have not replied to him completely and correctly inspite of opportunity given to him to file the exact details of incomplete information. Therefore, nothing survives in these appeals and all of them are dismissed as lacking in merit.

Announced in the open court on this 6th day of February, 2009.

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

