

GOA STATE INFORMATION COMMISSION AT PANAJI

CORAM: Shri Afonso Araujo, State Information Commissioner

Appeal No. 276/SCIC/2008

Shri Prabhakar S. Yende,
C/O Mapusa Jana Jagruti Samiti,
H. No. 35 of J. T. Shetye,
Ward No. 11, Khorlim, Mapusa – Goa.

..... Appellant.

V/s.

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

..... Respondents.

Authorized representative, Shri. J. T. Shetye for Appellant.

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

J U D G M E N T

(Per Afonso Araujo)

Non-compliance on the part of the Public Information Officer with the direction of the First Appellate Authority mentioned in the order dated 3/11/2008, is the subject matter in this Second Appeal.

2. Pursuant to the order dated 14/07/2008 passed by the Director of Urban Development in case No. 21/08/DMA/RTI, as the Appellant has not specifically asked the information about the allotment of 4 stalls, the Appellant agreed to reframe the questions on the information required. Accordingly, on 16/7/2008, the Appellant addressed a letter to the Public Information Officer, Respondent No. 1 and sought the following information: -

Whether the four stalls allotted to the following four persons (1) Shri Manohar Gaonkar; (2) Shri Vinod K. Wadkar; (3) Smt. Sulaksha S. Toraskar and (4) Shri Santosh Karpe in the KTC bus stand complex fulfills the criteria of allotment under the Self Financing Scheme undertaken by the Mapusa Municipal Council? The Respondent No. 1 in his reply dated 13/8/2008 stated that four persons, 1) Shri Manohar Gaonkar; (2) Shri Vinod K. Wadkar; (3) Smt. Sulaksha S. Toraskar and

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(4) Shri Santosh Karpe who were allotted stalls is as per request made by the KTC vide their letter No. KTC/AE©/S-87/2001-0/784 dated 7/2/2002. In the reply further stated that the Appellant may approach the Kadamba Transport Corporation Limited (for short KTCL) to find out what criteria has been adopted by them for allotment including present four stalls and Resolution No. 5 taken in the meeting dated 29/9/04 it was suggested by the Council to take policy decision on such matters whereas such files are referred to the Council for approval which also applicable to all such cases.

3. Not content with the reply dated 13/8/2008 by the Respondent No. 1, the Appellant moved the First Appellate Authority, the Respondent No. 2 and filed an Appeal on 10/9/2008. The Respondent No. 2 by order dated 3/11/2008 on the grounds that the reply of the Respondent No. 1 dated 13/3/2008 was not proper, directed the Respondent No. 1 to furnish the information within 10 days whether the four persons mentioned in the application dated 16/7/2008 fulfill the criteria. In pursuance of this order dated 3/11/2008 the Respondent No. 1 vide letter dated 12/11/2008 informed the Appellant that this Council has constructed stalls on KTC land, the land is in the possession of KTCL which has been given to the Council for construction of new stall and instead of this Council has given the quota of 20 stalls to KTCL and as per the request made by KTC vide their letter NO.KTC/AE©/S-87/2001-0/784 dt. 7/2/02. This council allotted stalls to them and therefore the reply given vide this office letter No.EST/4485/2008 dated 13/08/08 is correct and it is as per the records.

4. Dissatisfied with the reply dated 12/11/2008 as the Respondent No. 1 has given misleading and not answered the query raised by the Appellant in his letter dated 16/7/2008, the Appellant preferred this Second Appeal.

5. Shri. Shetye, authorized representative of the Appellant submitted that to the application dated 16/7/2008, a reply was given on 13/8/2008 and the Respondent No. 1 intentionally not replied to the question asked and give misleading reply and that to the order passed by the First Appellate Authority on 3/11/2008, the Respondent No. 1 replied on

...3/-

12/11/2008 and the reply again is the same and infact quoted the same reply of 13/8/2008 and that the four persons whom the stalls are allotted were not licencees and that they do not fulfill the criteria of Self Financing Scheme. Shri Dipak Desai, Public Information Officer has stated that there was an inquiry and files were taken by the Vigilance Department and the Respondent No. 1 is ready to give the information but they are not in possession of the files.

6. The only question for determination is whether the reply provided in the letter dated 12/11/2008 by the Respondent No. 1, meets the requirement to the information sought by the Appellant in his letter dated 16/7/2008.

7. The information which the Appellant is seeking is whether the four persons to whom the stalls were allotted fulfill the criteria of allotment under the Self Financing Scheme undertaken by the Mapusa Municipal Council (for short the Council). From the contents of the letter dated 12/11/2008, one can gather the following:-

- (i) the land belongs to the KTCL given to the Council for construction of a new stalls;
- (ii) Council has constructed the stalls on the KTCL land;
- (iii) Council has given twenty stalls quota to KTCL.

Though the Council has constructed the stalls on the land belonging to the KTCL, in return twenty stalls were given to the KTCL as the land belongs to the KTCL and it was for KTCL to deal with those twenty stalls whichever way they intend. The Council has nothing to do with the allotment of the stalls once they have been placed at the disposal of the KTCL and that is what precisely the Respondent No. 1 has stated in his letter dated 13/8/2008 and as such the reply of the Respondent No. 1 is not intentional misleading information and the question of imposing penalty or disciplinary proceedings does not arise.

8. However, the Respondent No. 1 should have taken recourse to the provision of section 6(3) of Right to Information Act, 2005 (for short the Act) and transferred the application to the concerned Department. Section 6(3) of the Act says: -

“(3) Where an application is made to a public authority requesting for an information,-

- (i) which is held by another public authority; or
- (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

The provision of section 6(3) of the Act is mandatory requires that the information sought to a public authority is held by another public authority, the first public authority shall transfer this information sought to the concerned public authority having the information and inform the concerned person immediately about such transfer. The proviso to the section says that this transfer should be as soon as possible and in no case later than five days from the receipt of the application.

9. Once the Council has allotted twenty stalls and placed them at the disposal of KTCL, the Respondent No. 1 should have transferred this application to the Public Information Officer of KTCL. Hence, the following order: -

ORDER

The appeal is allowed. The Respondent No. 1 is directed to transfer the application dated 16/7/2008 of the Appellant to the Public Information Officer of the KTCL within 5 days from the date of this order and with intimation to the Appellant.

Pronounced in the open court on this 15th day of April, 2009.

Sd/-
(Afonso Araujo)
State Information Commissioner

