

# GOA STATE INFORMATION COMMISSION AT PANAJI

**CORAM:** Shri Afonso Araujo, State Information Commissioner

Appeal No. 206/SIC/2008

Mrs. Maria Henrita D'Souza,  
Section Officer,  
Secretariat, Porvorim – Goa.

..... Appellant.

V/s.

1. The Public Information Officer,  
Shri P. S. Gude,  
The Joint Director of Accounts,  
Directorate of Accounts,  
Panaji - Goa.
2. The First Appellate Authority,  
Shri Rajan V. S. Kunkolienkar,  
The Director of Accounts,  
Directorate of Accounts,  
Panaji - Goa.

..... Respondents.

Appellant present in person.

Adv. Shri. K. L. Bhagat for both Respondents.

## **J U D G M E N T**

(Per Afonso Araujo)

The order of the First Appellate Authority, confirming the denial of the information by the Public Information Officer, is challenged in this Appeal.

2. The Appellant, Section Officer working in the Law Department, approached the Public Information Officer – the Respondent No. 1 by letter dated 8/9/2008 and sought the following information under the Right to Information Act, 2005 (to be referred as 'the Act'): -

1. Copy of Confidential letter No. 2/1/2008-US(E)/Misc, dated 27/8/2008, from the Under Secretary (Law).
2. Copy of the Noting wherein the letter has been examined.
3. Copy of the Order, of the Competent Authority, if any, treating absence of the undersigned as unauthorized.

The Respondent No. 1 in his communication dated 10/9/2008 denied the information to the Appellant, stating that only citizens have the right of information and the 'Companies' and 'firms' though legal 'persons' are not citizens as per Article 5 of the Constitution.

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3. Not content with the reply of the Respondent No. 1, the Appellant moved the First Appellate Authority – the Respondent No. 2, to obtain the information denied. By order dated 24/10/2008, the Respondent No. 2 upheld the denial of the information on the reasoning that the only the citizens can seek information under the Act and the Appellant sought information in her official capacity and not as a citizen. Aggrieved by the order of the Respondent No. 2, the Appellant preferred this Second Appeal praying for information required; punishment in accordance of the provisions of the Act for physical and mental torture.

4. In his submission, Shri Almeida contended that the denial of the information was contrary to the provisions of the Act and in the decision of this Commission in Appeal No. 143/2007-08 has observed that a Government servant is a citizen and entitled for information under the Act and that the Appellant mentioned her designation and the Department where she is working for the purpose of communication and that the Respondents wrongly denied the information for which the penalty, disciplinary proceedings be imposed on the Respondent No. 1 and compensation to the Appellant. Shri. Bhagat submitted that the information was denied to the Appellant in view of the earlier decision of the Commission in Appeal No. 109/2007-08 : T. S. Vincent Vs. Public Information Officer, Electricity Department where it was observed that Government Servant cannot seek information and that the Respondent No. 1 is prepared to provide the required information to the Appellant.

5. I have gone through the records of the case and considered the submissions of both the parties. The question which arises in this Appeal is whether the Respondents were justified in denying the information as the same was sought by the Appellant in her official capacity being a Government Servant.

6. All citizens shall have the right of information is the mandate encompassed in section 3 of the Act and only in circumstances enumerated in section 8(1) of the Act the information can be denied. The mere fact that the information seeker is a Government servant and sought information in his official capacity, is not the reason to deny him the information. As long as the information seeker is a citizen of this country, his status as public servant and the Government Department to

which he is attached, is immaterial for the purpose of seeking information under the Act. There is nothing on record to indicate that the Appellant is not a citizen. The reference in the letter dated 8/9/2008, of the designation of the Appellant and the Department in which she is working was only for the purpose of contacting the Appellant in the process of the seeking information.

7. In Appeal No. 109/2007-08, T. S. Vincent V/s. Public Information Officer, Electricity Department, this Commission held the view that Government servant/Public servant cannot seek the information under Act. Perhaps, the Respondents relying on this decision, denied the information as the Appellant sought the information in her official capacity. Subsequently, in Appeal No. 143/2007-08; Vithal P. Khandolkar V/s. Public Information Officer, Commissioner of Labour and Employment, this Commission took a contrary view. Shri Bhagat made a submission that the Respondent No. 1 is ready to provide the information sought by the Appellant.

8. The Appellant sought information on 8/9/2008, the Respondent No. 1 promptly replied on 10/9/2008. The First Appeal was presented on 29/9/2008 and the order passed on 24/10/2008. There was no delay in providing the information. The refusal to provide of information was mainly to the fact that the Respondents relied on the earlier decision of the Commission wherein a Government servant was denied information. The Respondents refusal was bonafide and not intentional or deliberate in order to harass the Appellant. In such circumstances, there is no question of imposing penalty; instituting disciplinary proceedings against the Respondent No. 1 and awarding compensation to the Appellant. Such action can be resorted to depending on the question whether the denial of the information is still persisting or not. In all fairness the Respondent No. 1 to provide the information required to the Appellant free of cost. Moreover the Respondent No. 2 in para No. 9 of Impugned Order has observed that the Public Information Officer may consider furnishing the information to Maria Henrita D'Souza if the same is sought in a personal capacity.

9. The Appellant being a citizen is entitled for the information sought under the Act and her request for the information in her official

capacity as the Government Servant, is not a bar to obtain the information under the Act. As such, the Appeal succeeds. Hence, the following order: -

**ORDER**

The Appeal is allowed. The order dated 24<sup>th</sup> October, 2008 of First Appellate Authority – the Respondent No. 2 is set aside.

The Respondent No. 1 to provide the information sought at Sr. No. 1, 2 and 3 in the request dated 8/9/2008 within 15 days from the date of the order.

Pronounced in the open court on this 11<sup>th</sup> day of May, 2009.

Sd/-  
(Afonso Araujo)  
State Information Commissioner

