

**GOA STATE INFORMATION COMMISSION AT
PANAJI**

CORAM: Shri Afonso Araujo, State Information Commissioner

Appeal No. 202/SCIC/2008/

Shri Kashinath Shetye
Bambino Bldg.,
Ribandar - Goa

...**Appellant.**

V/s.

1) The Public Information Officer
Dy. Director of Panchayats
Directorate of Panchayat
Panaji -Goa

...**Respondent No. 1**

2) The First Appellate Authority
The Director of Panchayats
Directorate of Panchayats
Panaji – Goa

...**Respondent No. 2**

J U D G M E N T

(Per Afonso Araujo)

The denial of the information sought under the Right to Information Act, 2005 (in short, ‘The Act’) by the Public Information Officer and the First Appellate Authority pronouncing the order dated 06.11.2008 without hearing the Appellant, are the grievances in this Second Appeal.

2. The Appellant by letter dated 22.09.2008 moved the Public Information Officer, the Dy. Director of Panchayats, Panaji – Respondent No. 1 and sought information under the Act and which is enumerated at points 1 to 10 in the said letter. The Respondent No. 1 in the reply dated 23.09.2008, has stated that the information sought by the Appellant is not available with the Respondent No. 1, as it relates to the records held by 189 Village Panchayats and each Panchayat has a Secretary who is a Public Information

...2/-

Officer and requested the Appellant to submit necessary applications to each of the 189 Village Panchayats. A list of those 189 Village Panchayats were enclosed to the reply dated 23.09.2008. Not satisfied with this reply of the Respondent No. 1, the Appellant preferred an appeal before the First Appellate Authority, the Director of Panchayats – Respondent No. 2 on 08.10.2008. The Respondent No. 1 in an order passed in the roznama of 06.11.2008 dismissed the appeal. This is the Impugned Order.

3. Shri Shetye, the Appellant submitted before me that his application seeking the information dated 22.09.2008 was denied to him in the reply dated 23.09.2008 and the order in the roznama of 06.11.2008 of the Respondent No. 2 was passed without hearing the Appellant and that the Respondent No. 1 should have been given the information with the help of the provisions of section 5(4) and (5) of the Act and provide the information and not transfer under section 6(3) of the Act and that the information was not provided and penalty should be imposed and compensation awarded to the Appellant.

4. I have gone through the records and taken into consideration the submissions of the Appellant and the written replies of the Respondents. The questions which arise for determination are whether the denial of the information by Respondent No. 1 was justified and whether the Respondent No. 2 passed the order in the First Appeal without hearing the Appellant.

5. On perusing the request for information at serial No. 1 to 10 in the letter dated 22.09.2008, the Appellant requires certified copies of the list moveable and stationary handcarts, stalls, kiosks, milk booths existing in all Village Panchayats in the State of Goa;

list of those who are illegal; list of those who are as per the designs and norms and standards; list of those who are not as per the designs and norms and standards and their area; certified copies of the sections under which those are approved by the Village Panchayat; certified copies of each licences issued to them; list of the electrical connection from Electricity Department for them; list of Food and Drugs licence issued to them. This comprehensive information from each of the Village Panchayats existing in the entire State of Goa was sought from and denied by the Dy. Director of Panchayats-North Goa, the Public Information Officer in the Directorate of Panchayats – the Respondent No. 1.

6. According to the Appellant, the Respondent No. 1 should have obtained the information from all the Village Panchayats by taking recourse to the provisions of section 5(4) of the Act and not transfer u/s. 6(3) of the Act. As per the provisions of section 5(4) the Public Information Officer may seek the assistance of any other officer as he or she considers that is necessary for the discharge of his or her duties and sub-section 5 says that such officer is to be treated as Public Information Officer. Section 6(3) deals with cases where the information sought is not in possession of concerned Public Information Officer and such Public Information Officer has to transfer the information to other Public Authority who is having the same.

Section 6(3) reads:

(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 a 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.

7. On reading the above provision of section 5(4) the Public Information Officer can seek the assistance of any officer within the Department whereas section 6(3) comes into play when information sought is not with the concerned Public Information Officer but other public authorities in which cases the Public Information Officer from whom the information was sought, will have to transfer the information to the Public Information Officer having the information and provide the same to the information seeker.

8. The Appellant chose the Public Information Officer, namely Dy. Director of Panchayats – North Goa who is the Public Information Officer North Goa District to provide the Appellant with the information sought from all the Village Panchayats. The Dy. Director of Panchayats-North Goa and South Goa are the Public Information Officers in their respective districts of North Goa and South Goa and the Director of Panchayats is their First Appellate Authority. In all there are 189 Panchayats in the State of Goa and each Panchayat has a Secretary who is a Public Information Officer and their First Appellate Authority is the Block Development Officer in their respective talukas. With this setup of above public authorities designated as Public Information Officers within their compass, the proper course is not to take the help of provision of section 5(4) whereby the assistance can be

sought from any officer within the department itself to provide information but to transfer under section 6(3) of the Act the information sought to other public authorities having the information.

9. By approaching only the Dy. Director of Panchayats-North Goa for the massive information from all 189 Panchayats in the entire State of Goa and requiring massive information from all 189 Panchayats was unreasonable and cumbersome. No doubt that the Appellant sought the information for a good cause “de bono publico” but, burdening one single Public Authority to collect the required information spread to all the Village Panchayats of the entire State of Goa was not proper. The mandate of the provisions of section 3 of the Act is that all citizens shall have the right to information and only in cases mentioned in section 8(1) of the Act the information can be denied. The Appellant is entitled for the information required but same should have been sought in a most feasible manner. It may be pointed out here that the same type of information has been sought from Municipalities but the difference is that in the entire State of Goa there are only 14 Municipalities whereas in the State of Goa there are 189 Panchayats. The proper course for the Appellant is to have a practical and feasible approach and identify those Village Panchayats in each taluka and seek the information from the Village Panchayats taluka-wise. Seeking information from one Public Information Officer from each of the Panchayats will have practical difficulty as this enormous information will be accumulated with one Public Information Officer and burden him alone to provide the information. In all there are 11 taluks in the State of Goa and collecting the information on the taluka level basis will be more practical and feasible.

10. The Respondent No. 1 based on Office Memorandum bearing No. 10/2/2008-RI dated 12.06.2008 from Government of

India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi, denied the information to the Appellant and directed the Appellant to seek information from each of the Village Panchayats as each Village Panchayat has a Secretary who is a Public Information Officer. In this Office Memorandum it is stated that if no part of the information sought is available but it is scattered with more than one Public Authority, the Public Information Officer should inform the applicant that the information is not available with the Public Information Officer and the applicant should make separate application to the concerned Public Authority for obtaining information from them. In matters of obtaining information under the Act the provisions of the Act shall have overriding effect notwithstanding anything inconsistent with any law or any instrument having effect by virtue of law. The Respondent No. 1 cannot make use of Official Memorandum and deny the information since the Act mandates to provide the information and only in cases enumerated in 8(1) of the Act information can be denied. The Office Memorandum is contrary to the provisions of the Act and cannot be resorted to deny the information.

11. The contention of the Appellant is that the Respondent No. 2 passed the order in the First Appeal without hearing the Appellant. The First Appeal was filed on 03.10.2008 and in the first hearing both the Appellant and the Respondent No. 1 were present and was adjourned to 04.11.2008 for arguments. The Appellant was absent on 04.11.2008 and it was adjourned to 06.11.2008. Due to some prior engagement of Respondent No. 2, the date was corrected to 07.11.2008 instead of 06.11.2008. It was the duty of the Appellant when he did not appear on 04.11.2008 to find out the next date of hearing and not make a grievance about correction of the dated from 06.11.2008 to 07.11.2008. The Respondent No. 2 has not violated the principle of natural justice. Besides, the First Appeal

was decided with a reasoned order based on a Memorandum of appeal and reply of Respondent No. 1 and other records.

12. For the sake of repetition the manner the Appellant sought the information from Respondent No. 1 from each of 189 Village Panchayats of the entire State of Goa was unreasonable and burdensome. The Appellant is directed to have a more practical and feasible approach in seeking the information from 189 Village Panchayats and approach the Head of the taluka and seek information from Panchayats within the respective taluka. With these observations the following order:

ORDER

The appeal is dismissed.

Pronounced in the open Court on this 8th day of June 2009.

Sd/-
(Afonso Araujo)
State Information Commissioner

