

## **GOA INFORMATION COMMISSION**

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

Appeal No. 51/2007-08/US(PER)

Shri. Gajanan D. Phadte,  
898, Nila Niwas, Alto Torda,  
P.O. Porvorim - Goa.

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Appellant.

V/s.

1. Public Information Officer,  
The Under Secretary (Personnel - II),  
Secretariat, Porvorim - Goa.
2. First Appellate Authority,  
The Joint Secretary (GA),  
Secretariat, Porvorim - Goa.

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Respondents.

### **CORAM:**

Shri A. Venkataratnam  
State Chief Information Commissioner  
&  
Shri G. G. Kambli  
State Information Commissioner

(Per A. Venkataratnam)

Dated: 17/01/2008.

Appellant in person.

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

Adv. S.S. Chopdenkar for the third party.

### **ORDER**

This disposes off the second appeal filed by the Appellant on 16<sup>th</sup> August, 2007 before this Commission praying for a direction to the Respondent No. 1 to provide the information requested by him by his request dated 27/07/2006. He has further requested the imposition of penalty for the denial of the information by the Public Information Officer. The brief history of the case is that the Appellant requested certain information from the Respondent No. 1 on 16/1/2006. The said application was rejected summarily by a noting on the reverse of the application itself by the Respondent No. 1 and also the then Joint Secretary (Personnel) with a remark that Dr. Modassir (IAS) is under the control of Ministry of Home Affairs, New Delhi, and that the Appellant may, therefore, seek information from that Ministry. Thereafter, the Appellant approached the Union Ministry of Home Affairs, New Delhi by his request dated 27/07/2006. In this request, he has asked the following information: -

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- (A) "Permissions sought/intimations given to the Government by Dr. M. Modassir, IAS, Collector, Daman, under Conduct Rules for purchase/sale of immovable properties, for construction, for land/estate development business/activities, and,
- (B) Permissions/intimation-acknowledgements given to him by the Government for purchase/sale of immovable property, for construction, land/sale development business/activities while in Government service".

2. The Ministry of Home Affairs have transferred the Appellant's application under the RTI Act to both the Administrator of Daman and Diu where Dr. Modassir was working at the time of the application and also to the Goa Government simultaneously by separate communications dated 24<sup>th</sup> August, 2006. This is, obviously, because major period for which the information requested is spent by Dr. Modassir in Goa as a member of Goa Civil Service and only after his promotion he was transferred to Daman and Diu Administration. It has come on record that certain information/reply pertaining to the period spent by Dr. Modassir at Daman was already informed by the Development Commissioner of Daman by his letter No. 6/262/06-PER/325 dated 13/9/2006. We are not concerned with this information. We are now concerned with the reply that had to be given by the Public Information Officer, Respondent No. 1 herein, about Dr. Modassir for the period prior to his "induction" to the IAS. What followed thereafter, is a comedy of errors by both the Respondents. Initially, there was absolute silence from the Respondent No. 1 from 24<sup>th</sup> August, 2006 to 12<sup>th</sup> December, 2006. On constant reminders from the Appellant, he wrote three letters to Dr. Modassir treating him as third party under the RTI Act on 12<sup>th</sup> December, 2006, 25<sup>th</sup> January, 2007 and finally on 2<sup>nd</sup> March, 2007. The first two letters were sent to Daman and third letter was sent to him at Goa address as he was transferred by that time and was working in Goa. The Public Information Officer has treated information requested by the Appellant to be third party information. Accordingly, he should have followed the procedure laid down under section 11 of the RTI Act. He should have given a written notice to the third party of the request within 5 days from the receipt of the request by him. Presuming that it has been received by him even by the end of the August, 2006 he should have sent this request to Dr. Modassir in the first week of September, 2006 itself, which he has not done and has no explanation to offer either through his statement or through the arguments. Finally, when he

has sent the application for the comments of the third party on 12/12/2006, he had to wait for reply only for 10 days from the date of the receipt by the third party. Even presuming that the belated letter of the Public Information Officer dated 12/12/2006 is received by the third party by 18<sup>th</sup> of December, 2006, the Public Information Officer should have informed the Appellant one way or the other regarding the request by the end of the December, 2006. Again, there is no explanation from the Public Information Officer for not deciding the request of the Appellant. In fact, there is no statement either from the Public Information Officer or the Respondent No. 2 whether the requested information is available with Goa Government or not. The law does not provide for indefinite period for the Public Information Officer to dispose off the request for information even if it pertains to a third party. Instead, he went on reminding the third party and finally he forwarded the comments of the third party to the Ministry of Home Affairs for necessary action on 23/03/2007. It never occurred to him that he, as Public Information Officer, and not the Union Home Ministry, should take a decision whether to supply the information requested. On the contrary in the written statement submitted before this Commission, consequent on the notice issued to him, the Public Information Officer stated at para 4 that the matter is already decided by the Daman Administration on 13/9/2006 and at para 6(E) thereof, he stated that the request is already disposed off by the Daman Administration. By this, he means to say that there is nothing for him to dispose off the request. As we have seen above, this is contrary to the factual position because the information supposed to be supplied by Daman Administration is for the period the third party worked in Daman after his induction into IAS and not for the period he worked in Goa before his induction. In any case, there is no evidence on record to suggest that the information requested about the third party for the period spent by him in Goa was supplied by the Daman Administration or by the Government of India. Hence, the reason cited by the Public Information Officer for not supplying the information is rejected.

3. The story of the disposal of first appeal by the Respondent No. 2 is no better. When the appeal was filed before him on 1/5/2007, the Respondent No. 2 numbered it as 33/07. After hearing the case a number of times, the matter was reserved on 26/7/2007 for passing the orders. No date was fixed for the orders. Meanwhile, as the time prescribed under the RTI Act for disposal of the first appeal was over, the Appellant has filed this second appeal on 16/8/2007. When a notice was issued to both the Respondents on 21/8/2007 by this Commission

fixing the case for hearing on 4/9/2007, the Respondent No. 2 has passed an order on 31/8/2007 posthaste, mentioning the Appellate order as No. 34. He has dismissed the first appeal without going into merits as it is filed beyond the "limitation period". In the same order, however, he has also discussed the merits of the appeal stating that the original request has already been disposed off by the Daman Administration and there is nothing further to be disposed off by the Public Information Officer. Both the stands are contradictory and we have seen above that it is not brought on record that the information pertaining to Goa has been supplied to the Appellant.

4. As both the Public Information Officer and first Appellate Authority have considered that the information to be supplied in this case pertains to the third party, we have issued a notice to the third party to state his case regarding the matter of supply of information by the Public Information Officer to the Appellant. Accordingly, Dr. M. Modassir, the third party in this case, has filed his reply and his Advocate S. S. Chopdenkar has also argued the matter. His objection to the disclosure of the information requested, is based on the exemption granted under section 8(1)(j) of the RTI Act as he contended that it is personal information and would cause unwarranted invasion of the privacy of the third party. He has also relied on a decision of the Central Information Commission dated 22/02/2006 in the case of Mr. Kumar versus Central Public Information Officer. He further stated that he has filed Special Suit No. 4/2007 at Daman against the Appellant for damages and also filed a criminal case No. 9/07 for defamation. Finally, we presume that he has objection for disclosure of the information though not specifically stated by him in as many words, in the statement.

5. We make it clear that the decisions of the Central Information Commission are not binding on this Commission as it is neither a court of record or has any appellate jurisdiction over this Commission. That apart, the decision cited by the third party is not relevant in the present case as the same pertains to the property returns which have already been provided by the Public Information Officer to the Appellant. Coming to the argument that it is a personal information, we would like to mention that even the information relating to any private body which can be accessed by a public authority under any law for the time being in force is defined to be "information" under the RTI Act. Once it is information and forms part of the "record" of a public authority,

unless its disclosure is exempted either under section 8 or 9, it has to be issued to any citizen without examining his locus standi or the purpose for obtaining the information. Again, we must remember that the information sought is not furnishing the property returns which are already given to him but about the permissions granted to him and applications made by him to seek such permissions to acquire/dispose of his immovable property. We, therefore, find no merit in the objection of the third party and overrule his objection for the disclosure of the information.

6. The matter is quite simple and straight forward. The Appellant wanted the information about the permissions sought by Dr. Modassir and given by the competent authority, for acquiring and disposing off immovable property. There is no doubt that the competent authority, when Dr. Modassir was serving in Goa prior to his induction in IAS, was the Goa Government. As such the records ought to be available with the Goa Government only. Further, the Home Ministry has categorically stated that the information pertaining to the period prior to the induction of Dr. Modassir has to be dealt with by the Goa Government by either giving it or rejecting request with reasons. No such thing has happened. The Appellant on the other hand, was given annual property returns by the Public Information Officer in response to another request by the Appellant. The property returns for the years from 1996-97 through 1998-99 have been filed by the Appellant himself to show that the permissions to acquire immovable property have been sought by him and were given by the Goa Government as per the remarks endorsed by Dr. Modassir himself in his annual property returns, in "remarks column". It is exactly these permissions given by the Government and the applications made by Dr. Modassir to obtain these permissions which are requested by the Appellant on 27<sup>th</sup> July, 2006. Neither the Public Information Officer has given this information nor has come out with any reasons for refusing to give the information. On the contrary, both the Public Information Officer and the Appellate Authority have taken a peculiar stand that the request of the Appellant stands disposed off by the Daman Administration.

7. Not only did the Respondents not discharge their statutory duties but they have also treated the information requested as third party information. The requests to acquire immovable property by the Government servants cannot be treated as third party information. The third party information has already been described in section 11 of the RTI Act and it has the following ingredients:-

- i) The information should have been supplied by the third party in confidence to the public authority;
- ii) The Public Information Officer should have formed an opinion to disclose the information prima facie, before issuing a notice to the third party;
- iii) The time limits laid down have to be observed by the Public Information Officer. Again, if he forms an opinion to reject the request consequent on the objection by the third party, he has to weigh the public interest in disclosing the information and the possible harm or injury to the interests of third party. He has to give reasons for his decision.

The information which is to be submitted by a Government servant while acquiring or disposing of immovable property is in accordance with the requirements of the Conduct Rules applicable to the Government servants. It is neither confidential information nor personal information. In fact even the information relating to a private body which could be accessed by a public authority under any law for the time being in force is defined as "information" under section 2(f) of the RTI Act. We have, therefore, no doubt in our minds that the permissions sought by the Government servants for acquiring/disposing off immovable property is not a third party information nor is it personal information and should be provided to a citizen under section 7 of the RTI Act.

8. Even if it is treated as third party information by the Public Information Officer, the Public Information Officer has not followed the procedure laid down in the section 11 of the RTI Act in this case as already discussed by us at para 2 above. We are, therefore, of the view that the request of the Appellant is wrongly rejected by both the Respondents. The order dated 31/8/2007 of Respondent No. 2 is hereby set aside. We are also satisfied that the deemed refusal by the Public Information Officer to disclose the information is malafide and direct him to show cause why proceedings to impose penalty of Rs.250/- per day from 15<sup>th</sup> October, 2006 (45<sup>th</sup> day from 31<sup>st</sup> August, 2006) till the information is supplied to the Appellant should not be started. The information should be furnished to the Appellant within the next 10 days and compliance reported to the Commission alongwith the reply to the show cause notice by the Public Information Officer. The appeal consequently is partly allowed. The relief

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regarding the penalty proceedings is deferred till the compliance report and reply to show cause notice is submitted by the Public Information Officer. The case is posted for further hearing on 30<sup>th</sup> January, 2008 at 11.00 a.m.

Announced in the open court on this 17<sup>th</sup> day of January, 2008.

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

Sd/-  
(G. G. Kambli)  
State Information Commissioner