

# GOA STATE INFORMATION COMMISSION AT PANAJI

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

**Appeal No. 247/SCIC/2008**

Shri Shashikant B. Bhagat,  
Bhagatwada, Canacona – Goa.

..... Appellant.

V/s.

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

..... Respondents.

Adv. S. Sanjeet Desai for the Appellant.

Adv. S. Usgaonkar for the Respondents.

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

**(Per Afonso Araujo)**

Failure to provide the information sought under the Right to Information Act, 2005 (for short the RTI Act) by the Public Information Officer and again not providing the same information inspite of the direction of the First Appellate Authority in the order dated 3<sup>rd</sup> November, 2008 to furnish such information, is the subject matter of this Appeal.

2. The Appellant by letter dated 29<sup>th</sup> July, 2008 addressed to the Public Information Officer, Chief Officer, Canacona Municipal Council, the Respondent No. 1, sought the certified copy of the permission granted to Babesh G. Borkar for construction to the existing shop. As the Respondent No. 1 failed to provide the information required, the Appellant preferred the first appeal before the First Appellate Authority on 8/9/2008 and the First Appellate Authority, Respondent No. 2 by his order dated 3/11/2008

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directed the Respondent No. 1 to provide information sought by the Appellant within the period of 7 days. As the Respondent No. 1 did not comply with the direction of the Respondent No. 2, the Appellant preferred this Second Appeal with the prayer to direct the Respondent No. 1 to furnish the desired information and necessary action to be taken against the Respondent No. 1 for failing to comply with the provision under the RTI Act.

3. Adv. S. Sanjeet Desai for the Appellant submitted that the Appellant required the certified copy of the permission granted to Shri Babesh G. Borkar by requested dated 29/7/2008 and that the Respondent No. 1 failed to provide within the time limit of 30 days as well as to comply with the direction of the First Appellate Authority and only in the reply filed in this Commission this information was provided and that due to the denial and delay, penalties may be imposed on the Respondent No. 1. Adv. Shri S. Usgaonkar for the Respondents urged that if the Appellant is aggrieved by the Order of the First Appellate Authority, he cannot prefer the Second Appeal as the Order of the First Appellate Authority is to direct the Respondent No. 1 to provide the information which has to be executed under Civil Procedure Code before the Respondent No. 2 rather than the Appellant preferring the Second Appeal and that even if the Order of the Respondent No. 2 was not complied with it does not become an appealable Order and no Second Appeal lies.

4. I have gone through the records of the case and taken into consideration the submission of both the parties. The questions for determination are whether the Respondent No. 1 failed to provide the

information required and whether the Second Appeal lies for non-compliance of the direction given in the Order of the First Appellate Authority.

5. The Appellant sought the information by way of certified copy of the permission granted to Shri Babesh G. Borkar for construction to the existing shop in the request dated 29/7/2008 which the Appellant addressed to the Respondent No. 1. The Respondent No. 1 ought to have either provided the information or reject the request within the period of 30 days from the receipt of the request. The provision of section 7(1) of the RTI Act mandates the Public Information Officer to dispose the request for information under section 6 of the Act as expeditiously as possible and in any case within 30 days of the receipt of the request and either provide the information on payment of such fees or reject the information for any reasons specified in sections 8 and 9 of the RTI Act. Further sub-section (2) of section 7 says that if the Public Information Officer fails to give decision on the request for information within the period specified under sub-section (1) it will amount to deem refusal of the request. As the Respondent No. 1 failed to provide the information sought in the letter dated 29/7/2008 it has to be considered that the request has been refused by the Respondent No. 1.

6. On account of the inference drawn of deemed refusal to the information sought, the Appellant preferred the First Appeal on 08/09/2008 before the First Appellate Authority, Respondent No. 2 and the Respondent No. 2 by Order dated 3/11/2008 directed the Respondent No. 1 to provide the information within the period of seven days. Again the Respondent No. 1 failed to comply with the Order of the Respondent

No. 2 and deprived the Appellant of the information sought. Now the question is whether the Appellant instead of preferring Second Appeal, should have approached the First Appellate Authority - the Respondent No. 2 for executing under the Civil Procedure Code the non-compliance of the order by Respondent No. 1. As per the provision of section 19 of the RTI Act, any person who, does not receive the decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority. Further sub-section (3) of section 19 says that the Second Appeal against the decision under sub-section (1) of section 19 shall lie to the Central Information Commission or State Information Commission. A Second Appeal will lie against the Order of the public authority passed under sub-section (1) of section 19. Any decision passed by the public authority in appeal under section 19(1) of the RTI Act can be challenged in the Second Appeal, even though the order of the First Appellate Authority is only a direction to the Public Information Officer to provide the information and the Public Information Officer failed to comply with such direction.

7. The RTI Act is a complete Code incorporating both substantive and procedural law. The remedy available to the person aggrieved by the Order of the First Appellate Authority is to prefer the Second Appeal rather than seek the execution of the Order under Civil Procedure Code before

the First Appellate Authority. The provision of the Civil Procedure Code are not applicable under the RTI Act except on a inquiry conducted by the State Information Commission under section 18 of sub-section (2) of the RTI Act and the powers are expressly specified in sub-section (3) (a) to (e) and confines only to the powers which are vested in civil Court while trying a suit under the Code. Under the RTI Act, these powers are vested only with the State Information Commission and not with First Appellate Authority. The failure on the part of the Respondent No. 1 to provide the information inspite of the Order of the Respondent No. 2 directing the Respondent No. 1 to provide the information within seven days, the remedy available to the Appellant is only by way of Second Appeal. Moreover the First Appellate Authority has no powers to impose penalties as provided under section 20 of the RTI Act for the failure to provide the information. The powers to impose penalties under the RTI Act is also vested only with the State Information Commission.

8. The Appellant preferred the Second Appeal on 12/12/2008 and in the reply filed to the Appeal on 17/03/2009 produced the information sought namely the Xerox copy of the letter No. CMC/RIA/2008-09/1002 dated 22/08/2008 and the Appellant require certified copy of the permission granted to Shri Babesh G. Borkar which the Respondent No. 1 must provide to the Appellant. Hence, the following order: -

### **ORDER**

The Appeal is allowed. The Public Information Officer, Canacona Municipal Council shall provide to the Appellant the certified copy of the permission granted to Shri. Babesh G. Borkar for construction to the

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existing shop mentioned in the request dated 29/07/2008 of Shashikant B. Bhagat – Appellant within 10 days from the date of the receipt of this order.

The Respondent No. 1 is also directed to show cause as to why the penalty under section 20 should not be imposed on him for not providing the required information to the Appellant within stipulated period of the RTI Act and the hearing is fixed on 16/07/2009 at 10.30 a.m. for compliance and reply to the show cause notice.

Pronounced in the open court on this 25<sup>th</sup> day of June, 2009.

Sd/-  
(Afonso Araujo)  
State Information Commissioner



