

GOA STATE INFORMATION COMMISSION AT PANAJI

CORAM: Shri Afonso Araujo, State Information Commissioner

Appeal No. 08/SCIC/2009

Shri Mahesh P. Kamat,
Shivnery Co-op. Society,
Comba – Margao.

..... Appellant.

V/s.

1. Public Information Officer,
Kadamba Transport Co-op. Ltd.,
Porvorim – Goa.
2. First Appellate Authority,
Kadamba Transport Co-op. Ltd.,
Porvorim – Goa.

..... Respondents.

Appellant in person.

Adv. Amey Kakodkar for the Respondents.

J U D G M E N T

(Per Afonso Araujo)

Denial of information by way of deemed refusal by the Public Information Officer and as well as due to the order the First Appellate Authority dismissing the appeal as pre-matured is the subject matter in this Second Appeal.

2. The Appellant on 13/02/2009 sought information under the Right to Information Act, 2005 (for short the RTI Act) and required information mentioned at Sr. No. 1 to 14 of the said letter. As the Public Information Officer did not provide the information within the period of 30 days and since it had to be considered as deemed refusal, the Appellant preferred the First Appeal on 18/03/2009 and by order dated 28/03/2009 the First Appellate Authority dismissed the appeal being the pre-matured. This is the Impugned Order.

3. Shri M. Kamat submitted that he asked for information on 13/02/2009 and the same has to be provided by 14/03/2009 and being deemed refusal preferred First Appeal on 18/03/2009 and that the First Appellate Authority dismissed the Appeal as prematured on the ground that the Respondent No. 1 informed the Appellant about the information

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on 18/03/2009 and that the letter dated 18/03/2009 was posted on 20/03/2009 and inspection was fixed on 19/03/2009 and the Appellant received this letter actually on 21/03/2009 and that the First Appellate Authority erred in dismissing the First Appeal as pre-matured and that the information sought was specific and if there is any change of procedure of payment of fees, the Appellant could have been informed and that the Respondent No. 1 converted the Appellant's request for information into the request for inspection to suit his convenience. Shri A. Kakodkar stated that this Appeal is not maintainable as no Appeal lies to the State Information Commission in respect of the non-compliance of the order of the First Appellate Authority and that the information sought is vague and the Appellant ought to have specified the manner of the information sought and that on 18/03/2009 the Appellant was telephonically informed about the information and that the Appellant rushed to file the First Appeal before the expiry of the 30 days period and that application dated 13/02/2009 shows that the Appellant did not pay the fees in cash and it was paid only on 17/02/2009 and that the information requested was given to the Appellant and the grievance of the Appellant is to harass and embarrass the Respondents.

4. I have gone through the records and proceedings of the case and taken into consideration the submission of both the parties.

5. The contention of the Appellant is that the information which is sought on 13/02/2009, the Respondent No. 1 should have provided by 14/03/2009. Infact the Respondent No. 1 did not comply with the provision of section 7(1) of the RTI Act and provide the information to the Appellant at least within the period of 30 days. In view of this deemed refusal, the Appellant preferred the First Appeal on 18/02/2009 and in the order dated 28/03/2009, the First Appellate Authority made a reference to the letter No. KTC/PIO/166(144)/08-09-973 dated 18/03/2009 addressed to the Appellant and further the order also states the information was kept ready for inspection on 19/03/2009 or thereafter. The Appellant admits the existence of the letter dated 18/03/2009 but states that he received it only on 21/03/2009 two days after the date 19/03/2009 which was fixed for inspection and that this letter dated 18/03/2009 was posted actually on 20/03/2009. The

Appellant produced an endorsement from postal authorities indicating that this correspondence was received in Margao post on 20/03/2009 and as such the contention of the Appellant that the letter dated 18/03/2009 was received by him on 21/03/2009 has to be accepted. Considering the fact that the Appellant filed First Appeal on 18/03/2009 and the letter of the Respondent No. 1 dated 18/03/2009 stating that the information was kept ready for inspection on 19/03/2009 and the Appellant received it only on 21/03/2009 it cannot be said that the First Appeal filed by the Appellant is prematured.

6. It is the contention of the Respondents that the Appellant has not affixed the fees which required in order to seek information at the time of filing the request for information on 13/02/2009 but fees were paid only on 17/02/2009 and for this reason it cannot be considered as a deemed refusal of the information sought. The mere fact that at the time of submitting application, the information seeker has not affixed or paid the necessary fees, the information sought cannot be denied. At the most it amounts to an irregularity which can be cured by directing the Appellant to affix or pay necessary fees. Neglecting to pay necessary fees at the time of seeking information is not the same as payment of fees for providing the information. The fees which are required to be paid in order to provide the information under section 7(1) of the RTI Act do not stand on the same footing of the payment of fees when the application for information is presented. Under this provision, a condition precedent to provide information is the payment of the fees without which the information need not be provided whereas initial payment of fees is not a condition precedent for providing the information. For the sake of repetition non-payment of such fees at the most is an irregularity which can be cured by payment of necessary fees rather than denying the information.

7. Since the Appellant did not received any information on the request dated 13/02/2009 within the period of 30 days and the appeal filed on 18/03/2009 cannot be considered as premature and as such the order of the First Appellate Authority dated 28/02/2009 requires interference. Hence, the following order: -

ORDER

The Appeal is allowed. The order of the First Appellate Authority dated 28/03/2009 is set aside. The Respondent No. 1 to provide the information to the request dated 13/02/2009 at points 1 to 14 to the Appellant free of costs within the period of 20 days from the date of the receipt of this order and Respondent No. 1 to report compliance on 16/11/2009.

Pronounced in the open court on this 20th day of October, 2009.

Sd/-
(Afonso Araujo)
State Information Commissioner

