

GOA STATE INFORMATION COMMISSION

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

Appeal No. 22/2006/DCF(S)

Shrihari Kugaji
78/2, 5th Cross, Adarsh Nagar,
Hindwadi, P.O. Belgaum District,
Karnataka - 590 001.

..... Appellant.

V/s.

1. Dy. Conservator of Forests (S) &
Public Information Officer,
Forest Department, Margao - Goa.
2. The Chief Conservator of Forest,
Panaji - Goa & First Appellate Authority.

..... Respondents.

CORAM:

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

(Per A. Venkataratnam)

Under Section 19 (3) of the RTI Act, 2005 (Central Act 22 of 2005)

Dated : 26/10/2006.

Appellant in person.

Public Information Officer in person.

Chief Conservator of Forests represented by the PIO.

ORDER

In this case, 4 requests for information were made by the Appellant to the Public Information Officer on 26/11/2005 and one more request was made on 7/12/2005. For the sake of convenience, all the requests have been clubbed together by the first Appellate Authority and we also do the same and pass a common order. These requests are about: (A) the number of saw mills and other details in the jurisdiction of the PIO; (B) number of private tree felling permissions granted by the PIO; (C) the list of mining lessees in his area; (D) number of roads passing through the forest in the jurisdiction of the PIO; & (E) regarding the compensatory afforestation done in his area. As no information was forthcoming from the PIO within the statutory time limit, 5 appeals were filed by the Appellant before Respondent No. 2 on 01/03/2006 against the

...2/-

deemed refusal of information. It so happened that the Government of Goa have published Goa Right to Information (Regulation of fee and cost) Rules, 2006, in short, referred to as the Fee Rules of 2006 under the RTI Act, and notified the same in Official Gazette Extraordinary No. 2, Series I, No. 45 dated 15/2/2006. Till such time, all the PIOs and the Public Authorities were in the doubt as to what amount is to be collected from the applicants for supply of information. Earlier, the Departments were collecting Rs.100/- as application fee under the Goa Right to Information Act, 1997. This being the case, the PIO in this case has asked the Appellant to deposit Rs.500/- as processing fee for all 5 applications. The fees were deposited by the Appellant by receipt No.543 dated 25/01/2006 for Rs.400/- and by receipt No.522 dated 27/01/2006 for Rs.100/-. Photocopies of the same are submitted before us. There is another photocopy of another receipt of the same number namely 543 dated 27/01/2006 for Rs.100/- issued by the same office namely the Dy. Conservator of Forests, South Division, Margao. This is obviously in some other matter but no mention was made how both receipts have the same number with different dates and different amounts. We do not know if they form a part of two different receipt books. This has to be verified by the Chief Conservator of Forests as the supervisory authority, separately, for his satisfaction.

2. Coming back to the issue, the Appellant filed his first appeal on 11/3/2006 before the Respondent No. 2 who was pleased to allow the appeal and direct the PIO, Respondent No. 1 herein, to supply the information and also to "adjust the fees" towards any other request pending or in whatever manner. The Appellant has made a grievance of this and wanted the amount to be refunded to him in addition to penalizing the PIO for supplying the information late and only after the directions of the First Appellate Authority.

3. We have gone through the records and statements of both sides and found that the PIO was under genuine doubt as to how much amount is to be collected and to be on the safe side collected Rs.100/- per application. It is true that the information is supplied late but we find that there is no deliberate intention on the part of the PIO either to deny the information or to give wrong information. In order to fall within the mischief of Section 20, an element of malafide has to be attributed to the PIO. The record does not show any such intention, the other hand, the PIO took diligent steps to correspond with the appellant from time to

time. We are, therefore, not inclined to start the penalty proceedings against the PIO. So far as the refund of application fee is concerned, it is to be noted that the Goa Right to Information (Regulation of fee and cost) Rules, 2006 are not given retrospective effect and therefore, these rules cannot be made applicable to the application made prior to the coming into force of these rules. The Goa Right to Information Act, 1997 has not been repealed by the Right to Information Act, 2005. However, in terms of the constitutional provisions, the provisions of the Goa Right to Information Act, 1997, which are inconsistent with the provisions of the RTI Act, 2005 shall be void. In other words, the provisions, which are not inconsistent, shall continue to be in force till the same are repealed. As the rules under Section 6 (1) of the Act were not framed till 15/2/2006, in our view, rules framed under the Goa Right to Information Act, 1997 shall be applicable till 15/2/2006. Therefore, the Department has rightly collected the application fee of Rs.100/- and as such the question of refund does not arise. The order of the Appellate Authority to the effect that excess amount is to be adjusted is also quashed and set aside.

Pronounced in open Court on 26th October, 2006 at 11.00 a.m.

(A. Venkataratnam)
State Chief Information Commissioner, GOA.

(G. G. Kambli)
State Information Commissioner, GOA.