

# **GOA STATE INFORMATION COMMISSION**

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

Appeal No. 15/2006/PWD

Alexinho F. Monserrate  
Santarbatt, Piedade,  
Divar, Ilhas - Goa.

..... Appellant.

V/s.

1. Public Information Officer  
The Executive Engineer,  
P.W.D., Works Division II,  
Patto, Panaji - Goa.
2. First Appellate Authority  
The Chief Engineer - II,  
PWD, Head Office,  
Altinho, Panaji - Goa.

..... Respondents.

## **CORAM:**

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

(Per G. G. Kambli)

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

Dated: 11/10/2006.

## **ORDER**

This is second appeal filed by the Appellant against the Respondents under sub-section (3) of Section 19 of the Right to Information Act, 2005 (hereinafter referred as the RTI Act).

2. The facts leading to this second appeal are that the Appellant vide his representation dated 29/10/2001 addressed to the Hon'ble Chief Minister of Goa, a copy of which was endorsed to the Respondent No. 1, has requested for the issuance of directives to the Executive Engineer, Public Works Department, Works Division II, Sub-Division III to execute the asphaltting of the kaccha road from Grace Pinto house upto Mahatma Gandhi Children's Park in the village of Goltim-Navelim, according to the estimates prepared by the P.W.D. and approved by the Government. The Hon'ble Chief Minister vide his letter dated 15/2/2002 replied the Appellant that the matter has been referred to the

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Executive Engineer (Roads) of P.W.D. for necessary action and requested the Appellant to follow up the matter with the concerned Executive Engineer. A copy of the said reply was also endorsed to the Executive Engineer (Roads), P.W.D. alongwith representation for compliance with the marginal remarks of the Hon'ble Chief Minister.

3. The Appellant also wrote letter dated 6/2/2002 to the Chief Engineer, P.W.D., Panaji - Goa complaining against non-completion of work for construction and black topping of roads at Santarbatt in Village Panchayat Goltim-Navelim. In the said letter, the Appellant has stated that the work was partly completed. The Appellant requested to inquire into the matter as to why the Contractor/P.W.D. abandoned the work half way although the work was approved by the Government. A copy of the said letter was endorsed to the Hon'ble Chief Minister. The Appellant thereafter made a representation dated 15/01/2003 to the Hon'ble Chief Minister of Goa again requesting to complete the incomplete road. A copy of the said representation was also endorsed to the Executive Engineer (Roads) Works Div. II, P.W.D., Patto, Panaji for necessary action. As the Appellant was not getting any response from the P.W.D., the Appellant by his application dated 1/6/2006 sought the information from the Public Information Officer, office of the Executive Engineer, P.W.D., Works Div. II, Patto, Panaji requesting to provide certified copy of the action taken report in pursuance to the representation dated 15/1/2003 under the RTI Act, 2005. The Executive Engineer - II, Works Div. II (R), P.W.D. vide his letter dated 8/6/2006 requested the Appellant to attend his office in order to fix a joint inspection of the site as suggested by the Appellant. Since the Appellant did not receive the information sought by him from the PIO, within the statutory period, the Appellant approached the first Appellate Authority vide his appeal dated 7/7/2006. In the said appeal, the Appellant stated that on receipt of the letter dated 8/6/2006, the Appellant approached the concerned Executive Engineer but no date was fixed for joint site inspection. However, the Appellant did not receive any response to his first appeal from the first Appellate Authority within the statutory period of 30 days. Hence, the Appellant filed the present appeal under sub-section (3) of Section 19 of the RTI Act.

4. The notices were issued to the Respondents. Mrs. Harsha Naik, Government Counsel appeared for the Respondents. She has also filed reply to

the memo of appeal. In her reply, the learned Advocate stated that the Appellant did not seek the information as contemplated under RTI Act. It is also denied by the learned Advocate for the Respondents that the Appellant has approached the office of the Respondent No. 1 for any joint inspection. She stated that the appeal filed by the Appellant is to be dismissed/rejected being premature, as the first Appellate Authority has not yet decided the first appeal. In the reply, it was also stated that the Appellant ought to have filed the Writ Petition before the Hon'ble High Court and not the second appeal. The information sought by the Appellant was vague and frivolous and that the Appellant ought to have applied for the information to the respective Comunidade or Panchayat.

5. On the day of the hearing, the Appellant filed written submissions. The learned Advocate for the Respondents, Mrs. Harsha Naik contented that the Appellant has not made any application to the Respondents as per the amended provisions of the RTI Act and the Court decision, in the prescribed form. The learned Advocate also submitted that the Appellant cannot file the present appeal as the first appeal is not yet decided by the first Appellate Authority. The learned Advocate for the Respondents was asked to show the amended provisions of the RTI Act and the decision of the Court. Attention of the learned Advocate for the Respondents was also drawn to the provisions of sub-section (3) and sub-section (6) of Section 19 of the R.T.I. Act. However, the learned Advocate for the Respondents sought time to produce the same and therefore, the learned Advocate for the Respondents was directed to file a written submissions alongwith amended provisions of the RTI Act and also to cite the decision of the Court according to which a citizen has to make an application in the prescribed format. The learned Advocate filed the written submissions and also an "Affidavit" of one Shri P. B. Seldankar (not sworn), which is, therefore, not an Affidavit.

6. In his written submissions, the Appellant submitted that the Appellant has requested for certified copy of the action taken report on the representation dated 15/1/2003 and that the Appellant had at no point of time requested the concerned Executive Engineer for a joint site inspection. The Appellant also reiterated in his written submissions that the Appellant did meet the Executive Engineer, Div - II in his chamber as per the letter dated 8/6/2006 when the Asst. Engineer - III of P.W.D. and one of the Junior Engineers were present. The

Appellant has submitted that the Respondent No. 1 had informed that the joint site inspection will not serve any purpose as the said work was already completed and bills were settled which fact has been communicated to the Appellant by the office of the Chief Minister vide letter dated 11/3/2002. The Appellant submits that the Respondent No. 1 ought to have replied within 30 days in terms of Section 7 (1) of the RTI Act and as the Respondent No. 1 did not comply with the statutory provisions and hence the Appellant was compelled to file the first appeal before the first Appellate Authority on 7/7/2006. The Appellant did not receive any reply from the first Appellate Authority also. Therefore, the Appellant filed the present second appeal under sub-section (3) Section 19 of the RTI Act. The Appellant also submitted that there is no provisions in the RTI Act where the citizen has to wait till the first appeal is decided in order to file the second appeal and that the Respondents have not applied their mind while filing the reply. The Appellant also submitted that there are no provisions in the RTI Act to file proceedings against the first Appellate Authority before the Hon'ble High Court in the form of writ and that the Respondents have undermined the powers entrusted to this Commission under the RTI Act. As regards to the application to be presented in the format, the Appellant stated that the RTI Act does not lay down any form for seeking information.

7. On the other hand, the learned Advocate for the Respondents in her written submissions has taken the plea for the first time that the first appeal filed by the Appellant was time barred and on this count alone the present appeal has to be dismissed. She also stated that no application for condonation of delay has been filed by the Appellant. She again reiterated in her written submissions that the Appellant has not filed proper application seeking the information as required under the RTI Act. She stated that the application ought to have been filed as per Rule 3 by accompanying the fees of Rs.10/- read with Section 6 of the RTI Act. She also stated that the Appellant requested for site inspection and site inspection is always carried out in the presence of both the parties and not in individual capacity. In the written submissions, it has been further stated that the Respondents were unable to understand the exactly what is meant by action taken report. She also objected for the production of the letter dated 22/1/1991. She has further reiterated that the Appellant ought to have sought the necessary information from the Communitade of Goltim or from concerned Panchayat.

8. We have carefully gone through the application made by the Appellant as well as the other documents produced by the Appellant. We have also perused the reply filed by the Respondents and considered the written submissions filed by the Appellant as well as by the learned Advocate for the Respondents.

9. It is an admitted fact that the Appellant has approached the Chief Engineer of P.W.D. as well as the Hon'ble Chief Minister of Goa requesting for completing the incomplete road by the P.W.D. which was abandoned by the Contractor/P.W.D. The Hon'ble Chief Minister vide his reply dated 15/2/2002 has also forwarded the representation of the Appellant to the Respondent No. 1 for taking necessary action as per the marginal remarks of the Hon'ble Chief Minister on the said representation. Coming now to the application dated 1/6/2006 of the Appellant made to the PIO, the Appellant requested for the issue of certified copy of the action taken report in pursuance to his representation dated 15/1/2003 under the RTI Act. In the said application, the Appellant has stated that he made a representation to the Hon'ble Chief Minister with a copy to the Respondent No. 1 vide letter dated 15/1/2003. However, he has not been furnished any reply nor any work is carried out by the office of the Respondent No. 1. On account of the non-completion of the work, a lot of inconvenience is caused to the public as well as damage to the partly asphalted road specially during the monsoon. This fact can be verified by conducting the site inspection at any point of time. The Appellant did not ask for any joint site inspection. What the Appellant stated was that the inconvenience cause to the public as well as damage to the partly asphalted road could be verified by conducting site inspection. Therefore, it is the Respondents who have misunderstood and or misinterpreted the letter dated 1/6/2006 of the Appellant.

10. The Appellant has specifically requested a certified copy of the action taken report by the Respondent No. 1 on the representation dated 15/1/2003 addressed to the Hon'ble Chief Minister of Goa and copy endorsed to the Respondent No. 1. The Respondent No. 1 has not denied the acceptance of the copy of the representation as well as a copy of the letter dated 15/2/2002 of the Hon'ble Chief Minister. In the written reply, the Respondents submitted that the Respondents did not understand what is meant by action taken report. It is surprising that the Respondents are taking such a plea. Many a times in a Government Departments/Offices an action taken report was sought by the higher authorities whenever any matter is referred to them for taking suitable

action/decision. The explanation given by the Respondents that they have not understood what is meant by action taken report cannot be accepted. The Respondents ought to have informed the Appellant the decision taken by them on the representation dated 15/1/2003 of the Appellant.

11. The learned Advocate for the Respondents during the course of arguments on 27/9/2006 had contented that the application seeking information has to be made in the prescribed format as per the amended provisions of the RTI Act and the Court decision. As the learned Advocate for the Respondents could not produce the amended provisions of the RTI Act and the Court decision, the learned Advocate for the Respondents was asked to give written submission giving all such details. However, in the written submissions filed by the learned Advocate for the Respondents neither the amended provisions of the RTI Act nor the Court decision has been produced. The learned Advocate made the reference to Rule 3 read with Section 6 of the RTI Act. The reference made to Rule 3 is also incomplete. The learned Advocate ought to have cited the correct Rules. The learned Advocate also stated that the application fee of Rs.10/- has not been paid. This plea is also after thought as no such plea was taken in the reply filed by the Respondents. That apart, this Commission has already held that non-payment of fees is a curable defect and the Respondents could have asked the Appellant to pay the application fee of Rs.10/- but chose to remain silent. In fact, when the letter dated 8/6/2006 was issued by the Respondent No. 1, Respondent No. 1 ought to have asked the Appellant to pay application fee of Rs.10/-. Rule 3 of Goa Right to Information (Regulation of fee and cost) Rules, 2006 do not prescribe any form for seeking information under Section 6 of RTI Act. It only prescribes the fees payable for the application and for the issue of documents/information. The learned Advocate for the Respondents for the first time has taken the plea that the first Appeal was time barred and the Appellant did not make any application for condonation of delay. It is not clear how this submission is relevant in the present second Appeal. Besides, these submissions are not substantiated. Mere submissions will not help the Respondents. If the first appeal was barred by the law of limitation, the first Appellate Authority ought to have dismissed the appeal being time barred. No justification is given as to why the first Appellate Authority did not take the decision within the statutory period laid down in the sub-section (6) of Section 19 of the RTI Act. In this context, it is to be pointed out that the Appellant sought the information

under the RTI Act from the Respondent No. 1 on 1/6/2006, which is not disputed by the Respondents. Being so, the Respondent No. 1 should have taken the decision on or before 1<sup>st</sup> July, 2006 in terms of provisions of sub-section (1) of Section 7 of the RTI Act. As the Respondent No. 1 did not take any decision within the statutory period of 30 days, the request for information stands deemed to be refused in terms of the provisions of sub-section (2) of Section 7 of the Act. Therefore, the Appellant has to presume that his request dated 1/6/2006 has been deemed to have been refused on 1/7/2006. This being the position, the limitation for filing the first appeal commences from 2<sup>nd</sup> July, 2006. As per the sub-section (1) of Section 19 of the RTI Act, the first appeal has to be preferred within 30 days from the expiry of the 30 days or from the receipt of such decision. In the instance case, the Appellant did not receive any decision from the Respondent No. 1 within statutory period of 30 days and therefore, the Appellant has rightly filed the first appeal before the first Appellate Authority on 7/7/2006. In fact, the appeal has been filed within 6 days from the date of the expiry of the statutory period within which the Respondent No. 1 ought to have taken the decision. It is not understood as to how the first appeal before the first Appellate Authority was time barred. Such arguments on the part of the learned Advocate for the Respondents that the first appeal is barred by law of limitations is fallacious, devoid of any substance and is taken in a casual and careless manner without proper application of mind to the law. In the written submissions, the learned Advocate for the Respondents has also made an averment that the appeal arose in the year 2003. We can't understand as to how the appeal arose in the year 2003 when the provisions of Section 19 of the RTI Act came into effect from 13/10/2005.

12. Turning now to the other grounds alleged by the learned Advocate for the Respondents that no second appeal could be filed without deciding the first appeal by the first Appellate Authority. It may be stated that here again, the learned Advocate for the Respondents has not at all applied the mind to the provisions of sub-section (3) and sub-section (6) of the RTI Act. Sub-section (6) of Section 19 of the RTI Act contemplates that a appeal under sub-section (1) or sub-section (2) of Section 19, shall be disposed off within 30 days from receipt of the appeal or within such extended period not exceeding the total of 45 days from the date of filing thereof. There is nothing on record produced by the Respondents that the period of 30 days was extended upto 45 days. The

provisions of sub-section (6) of Section 19 are mandatory and first Appellate Authority is duty bound to dispose off the appeal within the time limit. Sub-section (3) of Section 19 stipulates that a second appeal against the decision under sub-section (1) of Section 19 shall lie within 90 days from the date on which the decision should have been made or was actually received in the Commission. Therefore, the provisions of sub-section (3) of Section 19 of the RTI Act are very clear and one need not wait till the first Appellate Authority makes the decision after the expiry period laid down in sub-section (6) of Section 19 of the RTI Act. The first appeal was admittedly made on 7/7/2006 and therefore, the first Appellate Authority ought to have taken the decision on or before 6/8/2006. The first Appellate Authority having failed to give the decision within the mandatory statutory provisions of 30 days, the Appellant has rightly approached the Commission on 10/8/2006. Therefore, the contention of the learned Advocate for the Respondents that the appeal is premature does not hold good.

13. It is also pertinent to note here that alongwith written submissions filed by the learned Advocate for the Respondents, an Affidavit has been enclosed to the said written submission, it is not clear from the said Affidavit as to which Respondent has made this Affidavit as no Respondent number has been mentioned nor any designation of the said officer has been specified. The date of the reply has also not been given in the said Affidavit and the same has been kept blank. The said Affidavit is also not sworn before any Magistrate or any Competent Authority and therefore the Commission cannot take the cognizance of such an Affidavit. It is amazing that an Affidavit can be so carelessly and casually prepared and filed without incorporating the relevant particulars of the person making the Affidavit and also the date of the reply. In short, this is not an affidavit at all.

14. It is interesting to note that the learned Advocate in her reply dated 18/9/2006 has stated that the Appellant ought to have filed the Writ Petition before the Hon'ble High Court against the first Appellate Authority instead of filing the second appeal before this Commission. Neither this Commission nor the Appellant has sought any advise from the learned Advocate for the Respondents as to what steps the Appellant ought to have taken against the in action on the part of the first Appellate Authority. We feel that the learned



Advocate for the Respondents has not applied mind properly to the provisions of sub-section (3) read with sub-section (6) of Section 19 of the RTI Act, which we have discussed above or she has not understood these provisions. The contention of the learned Advocate for the Respondents that the Appellant ought to have sought this information from the Comunidade of the Goltim or from the Village Panchayat is not at all tenable. The learned Advocate for the Respondents submitted that the Respondents had undertaken the construction of road and has abandoned the work as the Comunidade of Goltim objected for the construction of road on the ground that land belongs to the Comunidade. When the work was undertaken by the Respondents and as the representation was made to the Respondents, we fail to understand as to why the Appellant should approach the Comunidade of Goltim or Village Panchayat when the Appellant has not made such representation to those authorities.

15. The learned Advocate for the Respondents has miserably failed to prove the non-action on the part of both the Respondents. The provisions of sub-section (1) of Section 7 as well as the provisions of sub-section (3) read with sub-section (6) of Section 19 of the RTI Act are very clear and do not leave any ambiguity. The learned Advocate for the Respondents has stated that the application made by the Appellant seeking the information is vague. In this context, we would also like to point out that it is the duty of the PIO to provide/render all reasonable assistance to the person making the request including the writing of the application as per the proviso to sub-section (1) of Section 6 of the RTI Act. If the application of the Appellant was incomplete or the Appellant has not paid the fees, the Respondent No. 1 should have provided the necessary assistance to the Appellant. It is needless to emphasize that the RTI Act is a beneficial legislation in favour of the citizen.

16. The manner in which the Respondents have handled the present matter and also the conduct on part of the Respondents in giving such vague and misleading statements/submissions, we feel that there has been deliberate, malafide and intentional attempt on the part of the Respondents to deny the information and therefore, we hereby give notice to Respondent No. 1 to show cause as to why the penalty proceedings under Section 20 of the RTI Act should not be initiated and fine of Rs.250/- per day delay should not be imposed on the Respondent No. 1. The Respondent No. 1 should file the reply on 30/10/2006 at 11.00 a.m.

17. We also allow the appeal filed by the Appellant and direct the Respondent No. 1 to provide the information to the Appellant within a week from the receipt of this order and submit the compliance on the aforesaid date and time i.e. 30/10/2006 at 11.00 a.m.

Pronounced in the open Court on 11/10/2006.

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

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