

# **GOA STATE INFORMATION COMMISSION**

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

Appeal No. 43/2006/TCP

Shri Sushant S. Naik  
H. No. 103, Costi-Kalay,  
Sanguem - Goa.

..... Appellant.

V/s.

1. Public Information Officer  
Town and Country Planning Department,  
Quepem - Goa.
2. First Appellate Authority  
The Chief Town Planner,  
Town & Country Planning Department,  
2<sup>nd</sup> floor, Dempo Towers,  
Patto Plaza, Panaji - Goa.

..... 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: 03/01/2007.

Appellant in person.

Respondent No. 1 and 2 are represented by Adv. Irshad Agha.

## **ORDER**

This disposes off the second appeal dated 3/11/2006 filed by the Appellant. The case of the Appellant is that he submitted his application before the APIO of Town and Country Planning Department at Quepem alongwith a postal order of Rs.10/-. The application consists of 4 requests. The APIO forwarded the request alongwith postal order to the Public Information Officer at Margao on 28/7/2006 and duly informed the Appellant. The PIO has forwarded the information on 5/9/2006 by post. Not satisfied with the reply the Appellant appealed before the Respondent No. 2 as the first Appellate Authority. The Respondent No. 2 has fixed up the date of hearing on 4/10/2006 at 3.00 p.m. in his office at Panaji. However, the Appellant did not turn up before him and an

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ex-parte order was passed by Respondent No. 2 dismissing the first appeal. Hence, the second appeal.

2. Notices were issued and the written statements have been filed by both the Respondents. The learned Adv. Irshad Agha appeared on behalf of both the Respondents.

3. The Respondent No. 1 stated that the information was not furnished within the statutory time period because the Appellant did not make payment of the requisite fee though the information was ready for issue in the office of the PIO. To substantiate this statement, he submitted an unattested copy of the office note of his own office dated on 2/8/2006 showing that the Xerox copies of the Regional plan is ready for issue. While it might be true, he has not produced any evidence to show that he informed the Appellant to pay the fees and how much is payable by him for the documents in terms of sub-section (3) of Section 7 of the Act. This being the case, the contention of Respondent No. 1 cannot be accepted that the information could not be given within the prescribed time as the Appellant did not pay the fees.

4. The next contention of the Appellant is that the information requested is incomplete. The Respondent No. 1 has submitted that the information on the points at 1, 3, 4 are not available with his Department as they are general in nature and do not "pertains directly to the scope of this Department". If it is so, we do not understand as to how the Respondent No. 1 failed to inform the Appellant in as many words. While denying that incomplete information was supplied to the Appellant, the first Respondent also maintains, in addition to the above contention, that the information is not readily available with his office. Both the contentions are contradictory to one another. The information which does not pertain to the scope of the Department cannot be available and therefore, cannot be said to be not readily available. In other words, the reply gives a meaning that the information should be available with the Department in normal course but is not available at this particular point of time.

5. The Respondent No. 2, on the other hand, has taken the plea that he cannot be made a party at all to the second appeal. We do not know how he can say this. At the time of arguments, the learned Adv. Agha submitted that the first Appellate Authority being a statutory authority cannot be made a party

before this forum. If that is so, the Public Information Officer who is also a statutory authority under the RTI Act should not be made a party. This defeats the very purpose of the provisions of the second appeal available to the citizens. It is also not the intention as per the provisions of RTI Act and rules framed thereunder to only call for the records of both the authorities, namely, the Public Information Officer and first Appellate Authority and dispose off the second appeal. When we find that the orders/letters of both the authorities are not in accordance with the RTI Act and have to be set aside, they have to be give an opportunity of the hearing which we do. It is for them to avail of or to ignore the opportunity. We are, therefore, rejecting the contention of the Respondent No. 2 that he cannot be made a party before this forum.

6. The Respondent No. 2, thereafter, stated same arguments put forward by the Respondent No. 1, namely, that his Department does not maintain any plans designated as a green belt, does not maintain any wild life coverage, does not maintain any plan showing mechanical/mining plans etc.

7. We have already given our decision on the above points. If the information is not maintained by the Department, a specific reply has to be given to the Appellant in as many words to all the queries raised by him serially. The next point is about the dismissal of first appeal for the default. Admittedly, the proceedings before the first Appellate Authority or this Commission are not disputes and no rights between two parties are determined. In fact, this Commission decides whether the citizen has been given access to the information he is requesting, which is his right, and whether the said officials are discharging their responsibilities under the RTI Act. There is, therefore, no question of dismissing of an appeal by the first Appellate Authority or even this Commission for the default of appearance of the Appellant. Even in his absence, the documents and records on file have to be examined and a decision given. Not doing so on the ground that the Appellant did not turn up on the day of hearing will deny his right of appeal available to him under Section 19(1) of the RTI Act. As such, the ex-parte order of the first Appellate Authority dismissing the first appeal is bad in law and therefore, the same needs to be set aside. The question of the Appellant asking first Appellate Authority to set aside the dismissal order for default before approaching this Commission, does not arise.

8. We now come to the prayers of the Appellant. The first prayer is regarding the information to be supplied free of cost. In view of the above discussion and incomplete information supplied by the PIO and irregular order passed by the first Appellate Authority, we direct the information to be supplied free of cost to the applicant. The second prayer is that Public Authority should be directed to display the list of Public Information Officers and first Appellate Authorities on a permanent painted board outside their offices. Section 4(1)(b)(XVI) provides that the names, designation and other particulars of the Public Information Officer should be published by the Public Authority within 120 days from the enactment of the RTI Act. This period has already expired on 12/10/2005. Though the manner of publication is not specified, we find the prayer of the Appellant regarding the display of the Public Information Officers' names on permanent board outside the office is quite reasonable and should be complied with in this case by the Respondent No. 2 as a Public Authority not only outside his own office but outside the office of all the PIO's and APIO's. As this involves some painting work, we are inclined to give one month's time limit to the Respondent No. 2 to comply with this order and submit compliance report. Final prayer is regarding imposition of penalty on the PIO and Appellate Authority and awarding cost of proceedings to the Appellant. There is no provision under the RTI Act to award the cost of proceedings to the Appellant as well as penalizing the first Appellate Authority. However, we are inclined to start penalty proceedings against Public Information Officer under Section 20 of the Act.

9. With the above discussion, we set aside the ex-parte decision dated 4/10/2006 of the first Appellate Authority. We also allow partly the appeal and direct the PIO to give the information serially for all the questions raised in his request dated 26/7/2006 to the Appellant within the week's time from the date of this order. He should also show cause as to why the penalty of Rs.250/- per day should not be imposed on Public Information Officer for delay in furnishing the complete information till it is furnished as directed by us now. The matter is posted for further hearing on penalty on 20/01/2007 at 11.00 a.m.

(A. Venkataratnam)  
State Chief Information Commissioner

(G. G. Kambli)  
State Information Commissioner