

GOA STATE INFORMATION COMMISSION

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

Appeal No. 49/2006/CCP

M. L. Ahuja
Son of Shri M. R. Ahuja
Residing at # 07,
Caculo Housing Colony,
Miramar, Panaji - Goa.

..... Appellant.

V/s.

1. Public Information Officer
The Commissioner,
The Corporation of the City of Panaji,
Panaji - Goa.
2. First Appellate Authority
Director of Municipal Administration,
Government of Goa, 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 is represented by Adv. Ashok Mashelkar.

Respondent No. 2 is represented by Adv. Shweta Naik.

ORDER

The Appellant has made a request to the Respondent No. 1 on 10/5/2006 asking for information on 6 points. The same letter was addressed to Member Secretary (North Goa) PDA, Panaji and 2 others. Though the request for the information is common as the Public Authorities are different, the second appeal is divided into 2 appeals. We are now dealing with application made to first Respondent, namely, the Commissioner of Corporation of City of Panaji, for short, CCP. The contention of the Appellant is that the Respondent No. 1 has not replied to him in the statutory time period of 30 days. Thereafter, he has appealed to first Appellate Authority who is the Director of Municipal

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Administration. As ill luck would have it, both the Public Information Officer and first Appellate Authority are one and the same person though the offices are different. The Appellate Authority, Respondent No. 2, fixed hearing on 2 occasions i.e. on 9th October and 20th October, 2006. On both occasions, no hearing took place in the office of the Appellate Authority. On the other hand, the Appellant was directed to approach the first Respondent who also did not hear him. The long and short of the story is that without passing any order by either of the Respondents, the Appellant received some information by post after the statutory time limit. It is the contention of the Appellant that the information supplied is not in accordance with what he has asked.

2. It is, therefore, relevant to transcribe all the 6 questions verbatim contained in the original request namely, (1) Conditions imposed with regard to the above (the case of construction of Mariot Hotel) and other safety and environmental issues while sanctioning plans of the hotel and the copy thereof: (2) A copy of the report confirming that the hotel conformed to all the conditions before the occupancy certificate was issued : (3) Inspections (and their frequency) carried out during the last three occasions and the copies of these reports : (4) The policy of the corporation and the Authority with regard to the plying of Heavy Transport Vehicles on internal roads in residential areas : (5) The mandatory requirement with regard to the provision of adequate parking space for the staff and vehicles by commercial establishments : (6) The policy and guidelines for parking of vehicles on public roads.

3. The reply of the first Respondent dated 20/10/2006 to the Appellant does not answer the questions from 1 to 3. For questions at Serial 4 and 6, the Appellant was directed to go to the Traffic Cell, Panaji - Goa. He has further regretted the inconvenience caused to the Appellant. However, he has given the Appellant copy of the approved plan of Mariot hotel which was earlier approved by the Panaji Municipal Council on 21/3/96 and attested by the Respondent No. 1 on 20/10/2006. The Appellant, therefore, has contented that information given to him is incomplete and the plans given to him by the Respondent No. 1 is not correct, as they do not correspond to the situation on the ground as of now. His case is that there are some illegal constructions on the site marked in the red colour in the plan and which was suppressed by the Respondent No.1. He, therefore, prayed for this Commission to take appropriate action against the Respondents.

4. The notices were served on both the Respondents and learned Adv. Ashok Mashelkar appeared for the Respondent No. 1 and Adv. Shweta Naik filed Vakalatnama on behalf of the Respondent No.2. The matter was adjourned a number of times for filing of reply by Respondents. Finally, on 12/12/2006, the Respondent No. 1 has filed his reply and there is no reply on behalf of Respondent No.2. In his reply, the Respondent No. 1 could not explain the reason for delay in furnishing the reply to the Appellant. He has also not explained how the replies for all the points raised by the Appellant in his original application could not be replied. As to the illegal structures existing in the approved plan of hotel Mariot, the Respondent No. 1 stated that this is not the forum for the Appellant for redressal of his grievances. Similarly, in respect of the movement of the heavy vehicle in residential areas, he submitted that Respondent No. 1 has no information and that the Appellant has to go to Traffic Cell of the Police Department. In short, he stated he is responsible to reply only to Appellant's letter dated 4/5/2006 and which he has already replied to the Appellant. In other words, he stated that all the 6 points of information on which was requested by the Appellant by original request dated 10/5/2006 are technically not permissible to be furnished to the Appellant. The Appellant's letter dated 4/5/2006 is produced by neither the Appellant nor the Respondent No. 1. It is also not the subject matter in this second appeal.

5. The Commission would like to first observe that, it has become the norm for the PIO of the CCP, Respondent No. 1 herein, not to reply to the citizens within the statutory period prescribed under the RTI Act. We have been observing this in a couple of other cases also. No reasons also are forthcoming why the information could not be either supplied or refused within the time limit. The Commission would like to take this seriously and directs the Respondent No. 1 to show cause within 15 days from the date of this order why the proceeding for penalty under Section 20 of the Act could not be initiated on this point alone.

6. On the merits of the case itself, we do not see any reason how the reply in respect of all the 6 points cannot be given by the Respondent No. 1. It is not left to the Respondent No. 1 to direct the Appellant to another authority or forum for the reply of the questions therein. If the information available with the some other authority, the Respondent No. 1 as PIO should have forwarded the

questions relating to another public authority, in this case the questions No. 4 to 6 as claimed by him, to that public authority within 5 days of the receipt of the application for the request under Section 6 (3) read with its proviso of the RTI Act.

7. Even the reply for other questions as is given by the Respondent No. 1 are not satisfactory. His reply on 20/10/2006 is said to contain 12 documents, the list of which not available. It does not contain the original sanctioned plan as given to Marriot Hotel on 20/10/1991 enclosing the conditions of the constructions. According to the Appellant all other documents are only renewals after canceling the list of conditions. Consequently, it is the contention of the Appellant that none of the inspection reports of the Respondent No. 1 before the occupancy certificate was given to the hotel were enclosed to the reply. Finally, the Respondent No. 1 at para 23 of his Affidavit in reply has mentioned that "except the information which is sought by the Appellant vide his letter dated 4/5/2006 sought by him" which is already replied by the Respondent No. 1 on 20/10/2006, the Appellant is not entitled to the relief's as mentioned in the para 28 of the appeal memo. As mentioned earlier, the request for information is dated 10/5/2006 and not dated 4/5/2006. The letter dated 4/5/2006 is neither the subject matter before us nor is mentioned by the Appellant in his second appeal. The Commission is unable to accept the contention of the Respondent No. 1 in para no. 16 of Affidavit in reply of Respondent No. 1 that the Appellant is not permitted to raise such queries (obviously referring those mentioned in the appeal memo) under the provisions of RTI Act but can only seek relevant information. The Appellant has requested for specific information which was not given by the Respondent No. 1 even in his belated reply and to add to that to say that he has not even permitted to raise such queries is absurd. He is, therefore, directed to furnish entire information immediately, in any case within 15 days of this order, in addition to showing cause to this Commission why the penalty should not be imposed on him.

8. There is no reply from the Respondent No. 2. The fate of the first appeal is not known. Even if he cannot entertain the first appeal as he himself being the PIO, he should have stated so and dismiss the appeal instead of calling for hearings and passing no order. This should be kept in mind by him in future as long as he continues to hold the posts of Commissioner of CCP and also the Director of Municipal Administration.

9. With the above discussion, the appeal is partly allowed. The information should be provided within 15 days and the reply to the show cause notice posted for hearing on 25/1/2007 at 11.00 a.m.

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

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