

GOA STATE INFORMATION COMMISSION

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

Appeal No. 32/2006/PAN

Mr. C. S. Barreto
H. No. 206, Mazalvaddo,
Assagao, Bardez - Goa.

..... Appellant.

V/s.

1. The Secretary, V. P. Anjuna Caisua &
Public Information Officer,
Anjuna, Bardez - Goa.
2. The Director of Panchayats &
First Appellate Authority,
Directorate of Panchayats,
Government of Goa,
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: 23/11/2006.

Appellant in person.

Adv. S. Henriques for the Respondent No. 1.

Respondent No. 2 in person.

ORDER

The Appellant by his application dated 8/5/2006 addressed to the Dy. Director of Panchayats and State Public Information Officer, Directorate of Panchayats, Panaji sought the following information under the Right to Information Act, 2005 (hereinafter referred to as the Act) :-

1. The total number of construction licences issued to Foreign Nationals of Non Indian Origin for building their houses/bungalows for the period from 1st June 2000 onwards till date.

...2/-

2. The total number of houses/bungalows transferred in the names of Foreign Nationals of Non Indian Origin which have been purchased by them for the period from 1st June 2000 onwards till date.
3. The total number of flats booked in the names of Foreign Nationals of Non Indian Origin and who have been issued house numbers for the period from 1st June 2000 onwards till date.

2. The Dy. Director of Panchayats forwarded the said application of the Appellant to the Respondent No. 1 with a directions to issue the information sought by the Appellant and report compliance vide Memorandum No. 26/87/DP/RTA/05-06. Since the Appellant did not receive any information from the Respondent No. 1, the Appellant preferred the first appeal before the Respondent No. 2 on 12/8/2006. The Respondent No. 2 fixed the matter for hearing on 12/09/2006. The Dy. Director of Panchayats, North Goa has also issued another Memorandum dated 30/8/2006 to the Respondent No. 1 directing the Respondent No. 1 to issue the information immediately, failing which further proceedings with regards to the appeal would be initiated. On the date fixed for hearing, the Respondent No. 1 remained absent and no order was passed by the Respondent No. 2 within the statutory period of 30 days and therefore, the Appellant has preferred this second appeal under sub-section (3) of Section 19 of the Act.

3. The Advocate for the Respondent No. 1 filed a short reply to the appeal memo. The Respondent No. 2 has also filed the reply. In the reply, the Respondent No. 2 has admitted the contents of para 1 to 5 of the appeal memo. The Respondent No. 2 submitted that inspite of the notice, the Respondent No. 1 remained absent on the date of the hearing and therefore, show cause notice was issued to the Respondent No. 1 as to why the disciplinary action should not be initiated against him and Respondent No. 1 has filed his explanation before the Respondent No. 2. The Respondent, therefore, prayed that case be remanded back for disposing the first appeal.

4. In the reply filed by the Advocate for the Respondent No. 1, the Respondent No. 1 admitted of having received the application dated 8/5/2006 seeking the information from the Respondent No. 1. The Respondent No. 1 stated that no construction licences have been issued to Foreign Nationals of Non

Indian Origin and further no house numbers have also been issued. During the course of arguments, the Appellant stated that the Appellant received the nil reply on 23/9/2006.

5. It is to be noted that the course adapted by the Director of Panchayats is not in accordance with the provisions of the Act. In the present case, the Respondent No. 1 is the Public Information Officer and the decision is required to be taken by the Respondent No. 1 independently. The Dy. Director of Panchayats has issued the Memorandum directing the Respondent No. 1 to issue the information, which is not proper. Infact, he ought to have transferred the application under sub-section (3) of Section 6 of the Act and that too within 5 days from the date of the receipt of the application whereas the Dy. Director of Panchayats has forwarded the application of the Appellant to the Respondent No. 1 vide Memorandum dated 28/8/2006 which is after 51 days from the date of the receipt of the application as against the statutory period of 5 days provided in sub-section (3) of Section 6 of the Act. Hence, the Dy. Director of Panchayats has not complied with the statutory provisions of the Act. Further, the Appellant preferred the first appeal on 12/8/2006 before the Respondent No.2, which ought to have been disposed off within 30 days from the date of receipt. The Respondent No. 2 has fixed the hearing on the first appeal on 12/9/2006 on which date the Respondent No. 1 was absent. The Respondent No. 2, therefore, ought to have passed the order on the first appeal within 30 days. On the contrary vide Memorandum dated 30/8/2006, the Dy. Director of Panchayats, North has issued another Memorandum to the Respondent No. 1, directing the Respondent No. 1 to issue the information to the Appellant. This Memorandum has been issued after filing of the appeal, which was unnecessary, and not in accordance with the provisions of the Act. Infact, the Respondent No. 2 ought to have passed an order on merits instead of the Dy. Director of Panchayats, North issuing the Memorandum. The Act does not provide for issuing any Memorandum but the orders in quasi-judicial capacity. Therefore, the course adapted by the Respondent No.2 was improper, unjust and unlawful and not in accordance with the provisions of the Act.

6. Coming now to the Respondent No. 1, the Respondent No. 1 has admitted of having received the application dated 8/5/2006 of the Appellant. The Appellant has stated that the Appellant received the nil information only on

23/9/2006. It is pertinent to note here that the Respondent No. 1 inspite of the notice by the Respondent No. 2 remained absent for hearing. No explanation or justification has been given for furnishing the nil information to the Appellant after the expiry of 30 days. The learned Adv. Shri S. Henriques appearing on behalf of the Respondent No. 1 was asked to clarify or justify the delay in providing the information to the Appellant and as to why the said information could not be provided to the Appellant within the statutory period of 30 days. The learned Advocate for the Respondent No. 1 submitted that he has no instructions in this regard and he cannot say anything besides the reply filed by the Respondent No. 1.

7. The Respondent No. 1 has not justified nor any explanation has been given by the Respondent No. 1 as to why the information could not be provided before 23/9/2006. The Respondent No. 1 is required to explain each day delay. The Respondent No. 1 also did not honour or implement the instructions of the superior authority. In spite of the directions from the Respondent No. 2, Respondent No. 1 has not complied with the directions. The Respondent No. 1 has also not filed any Affidavit in reply to the appeal memo. The Respondent No. 2 has admitted the contents of paras 1 to 5 of the appeal memo. Therefore, the conduct of the Respondent No. 1 is not bonafide and we strongly apprehend that the Respondent No. 1 has deliberately and with malafide intention withheld the disclosure of the information till 23/9/2006. The Respondent No. 1 has to explain each day delay beyond the period of 30 days from the date of the receipt of the application of the Appellant from the office of the Respondent No. 2. Therefore, we feel that this is a fit case for invoking the provisions of Section 20 of the Act. The Respondent No. 1 is therefore hereby directed to show cause as to why the penalty of Rs.250/- per day delay should not be imposed till the information is provided to the Appellant i.e. upto 22/9/2006. The matter is fixed for hearing on 15/12/2006 at 11.00 a.m. for reply of the Respondent No. 1.

Pronounced in the open Court on 23rd November, 2006.

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

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

