

GOA STATE INFORMATION COMMISSION

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

Appeal No. 9/2006/POLICE

Joao C. Pereira
H. No. 40, Acsona, Utorda,
Salcete - Goa.

..... Appellant.

V/s.

1. Public Information Officer
Police Department,
South Goa, Margao.
2. First Appellate Authority
Deputy Inspector General of Police,
HQ, Panaji.

..... Respondents.

Appeal No. 10/2006/POLICE

Joao C. Pereira
H. No. 40, Acsona, Utorda,
Salcete - Goa.

..... Appellant.

V/s.

1. Public Information Officer
Police Department,
South Goa, Margao.
2. First Appellate Authority
Deputy Inspector General of Police,
HQ, Panaji.

..... 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: 19/10/2006.

ORDER

By the consent of learned Advocates for both the parties, we will dispose off the above 2 appeals by this common order as the parties involved in both the appeals and issues are the same. The facts of the Appeal No. 9/2006 are that the

...2/-

Appellant by his application dated 15/11/2005 addressed to the Respondent No. 1 sought the information on 8 points under the Right to Information Act, 2005 (for short as the Act) relating to the complaint dated 22/3/2005.

2. As the Appellant did not receive any communication within statutory period of 30 days from the Respondent No. 1, the Appellant filed the first appeal before the Respondent No. 2. The Appellant received the communication dated 10/1/2006 from the office of the Respondent No. 2 informing the Appellant the Government of Goa has notified the Information Officers, Asst. Information Officers and first Appellate Authority for the Police Department under the Act. Aggrieved by the said communication dated 10/1/2006 of the Respondent No. 2, the Appellant has preferred the second appeal on various grounds as set out in the memo of appeal.

3. The Respondents filed their reply and in their reply, the Respondents stated that the present appeal is barred by law of limitation and the grounds given by the Appellant are not good grounds to condone the delay. The Appellant also stated that the application dated 15/11/2005 was not accompanying with application fee of Rs.10/- as required under Rule 3 (1) of the Goa Right to Information (Regulation of fee and cost) Rules, 2006 and as such the Appellant was not entitled to obtain the information under Section 6 (1) of the Act. The Respondents also submitted that the Appellant did not deposite the fee as provided under Rule 3 (3) of the said Rules till 3/5/2006 and therefore, the Appellant was not entitled to obtain the information under Section 7 (5) of the Act.

4. On merits, the Respondents submitted that the Public Information Officer has not denied the disclosure of information to the Appellant. The Appellant was asked to make the payment of fees and obtain the information which was made on 3/5/2006 and accordingly various statements more particularly set out in the letter dated 2/3/2006 have been supplied to the Appellant. The Respondents further submitted that the Appellant did not approach the Respondent No. 1 for the payment of fees and collect the available information. The Respondents, therefore, prayed that the appeal be dismissed.

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5. The facts of Appeal No. 10/2006 are that the Appellant requested for information on 4 points pertaining to the complaint dated 26/3/2005. Since the Appellant did not receive any reply from the Respondent No. 1 within the specified statutory period of 30 days, the Appellant presumed that the request of the Appellant deemed to have been rejected by the Respondent No. 1 in terms of Section 7 (2) of the Act. The Appellant also stated that he also received letter dated 10/1/2006 from the office of the Respondent No. 2 informing the Appellant that the Government of Goa has notified the Information Officer, Asst. Information Officer and first Appellate Authority for the Police Department under the RTI Act. Hence, the Appellant has filed the present second appeal.

6. The Respondents in their reply raised preliminary objection stating that the appeal filed by the Appellant is barred by law of limitation and that Appellant did not pay the application fee as required by Rule 3 (3)(b) of the Goa Right to Information (Regulation of fee and cost) Rules, 2006 till 3/5/2006 and therefore, Appellant was not entitled to obtain the information under Section 7(5) of the Act. On merits, the Respondents submitted that Respondents did not deny the information to the Appellant nor there has been any delay in providing the information. The Respondents also stated that the Appellant has been provided with information regarding the points 1 (a) (c) and (d) except the information on point (b). As regards the point (b), the Respondents had replied that no statement of PI Harish Madkaikar was recorded and therefore, the same could not be provided to the Appellant.

7. Both the parties were represented by Advocates. We shall first deal with the preliminary objections raised by the Respondents. As regards the preliminary objection raised by the Respondents that the appeals were time barred, this Commission has already passed an order on 31/7/2006 condoning the delay and therefore, the objection raised by the Respondents is overruled. Regarding the non-payment of fees by the Appellant it is to be noted that the Appellant sought the information from the Respondents by application dated 15/11/2005 whereas the Goa Right to Information (Regulation of fee and cost) Rules, 2006 have come into force w.e.f. 16/2/2006. Being so, the fees were prescribed for the first time under the Act on 16/2/2006 whereas the application was made on 15/11/2005. Being so, the Appellant was not required to pay any fees at the time of submission of his application. Therefore, we do not find any substance in this preliminary objection and therefore, we over rule this objection too.

8. In both these appeals, we have noticed that the Sub-Divisional Police Officer, Vasco-da-Gama has provided the information sought by the Appellant before filing these appeals though belatedly after the expiry of 30 days. In fact, the Appellant has specifically taken a plea in the memo of appeal that the APIO is not empowered to decide, grant or reject the application under the Act. The Respondents in their reply has not dealt with this averment of the Appellant and chose to remain silent. On the contrary, the Respondents in their reply have stated that the contents of the memo of appeal, which have not been specifically admitted, should be taken to have been denied. It is not understood as to how the Respondents can deny the statutory provisions of the Act. We have already held the view in number of cases that the APIO is not vested with powers either to grant or reject the request and or to decide the applications. In both these appeals, the APIO has decided the request of the Appellant and therefore, the decisions of the APIO is a nullity being without jurisdiction and non-est.

9. In both these Appeals, the authorized representative of both the Respondents has supported the reply by affidavits, which are not sworn before the Competent Authority and therefore, both these affidavits are not the affidavits.

10. However, we have noticed that the Appellant has been provided with the information by the APIO after the expiry of statutory period laid down in the Act. The Appellant has sought the directions from this Commission for providing the information. Since the information has already been provided, the question of giving any directions at this stage does not arise.

11. We will now come to the prayer of the Appellant that the Appellant should be paid cost of Rs.250/- for each day delay and also recommend disciplinary proceedings against the Respondents. In this context, it may be pointed out that there is no provision in the Act for awarding the cost of Rs.250/- per day to the Appellant. Nonetheless, the Commission is empowered to impose the penalty of Rs.250/- per day delay on the PIO. We have taken liberal view in similar cases and therefore, we hold the same view in these two cases also.

12. In both these appeals, we have noticed that the Respondents have not acted and discharged the duties imposed on them under the Act. The Respondents was very well aware that the Government has notified various

authorities such as PIO, APIO and FAA as can be seen from the letter dated 10/1/2006 and as such, the Respondents ought to have decided the applications of the Appellant. On account of the in action on the part of the Respondents to discharge mandatory statutory provisions, the Appellant has been made to run from pillar to post thereby causing harassment, loss and detriment and therefore, we feel that this is a fit case to invoke the provisions of clause (b) of sub-section (8) of Section 19 of the Act.

13. In view of what has been discussed above, we partly allow the appeals and direct the office of the Director General of Police to pay the compensation of Rs.1000/- on account of the harassment, loss and other detriment suffered by the Appellant. The prayer of the Appellant to recommend disciplinary proceedings against the Respondents is rejected. The compensation should be paid to the Appellant within 2 weeks from the date of the receipt of this order and compliance is reported to the Commission.

Pronounced in the open Court on 19th October, 2006.

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

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