

GOA STATE INFORMATION COMMISSION

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

Appeal No. 06/2007-08/ Addl. Col.

Shri Pravin H. Zantye
Having office at Dr. Atmaram
Borkar Road, Post Box No. 310,
Panaji - Goa,
Partner, Hira Films Exhibitors.

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Appellant.

V/s.

1. Shri Altaf Mavany
having office at 1-Durga Chamber,
18th January Road,
Panaji - Goa.
2. Public Information Officer,
Additional Collector - I,
Collectorate of North Goa,
Panaji - Goa.
3. The Collector and District Magistrate (North),
and First Appellate Authority,
Collectorate, North Goa District,
Panaji - Goa.

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Respondents.

CORAM:

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

(Per G. G. Kambli)

Dated: 24/05/2007.

Adv. Pangam for the Appellant.

Adv. P. Kamat for the Respondent No. 1.

Shri Anand Gaude, L.D.C., authorized representative for the Respondent
No. 2. Respondent No. 3 absent - Ex-parte.

ORDER

This is a second appeal filed under sub-section (3) of Section 19 of the Right to Information Act, 2005 (for short the Act) against the judgment and order dated 27/3/2007 passed by the Respondent No. 3 in case No. 31-64-2006/RB/RTIA (hereinafter referred to as the impugned order).

2. The facts of the case, in brief, are that the Respondent No. 1 herein

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approached the Respondent No. 2 vide application dated 22/11/2006 under the Act requesting the Respondent No. 2 to provide certain information in respect of the renovation of Cine Samrat and Cine Ashok run by the Appellant. Since the Respondent No. 1 did not receive any communication from the Respondent No. 2 within the specified period, the Respondent No. 1 filed the first appeal before the Respondent No. 3 on 20/1/2007 presuming that the Respondent No. 2 deemed to have refused the request of the Respondent No. 1.

3. That while the first appeal was pending before the Respondent No. 3, the Respondent No. 2 passed an order dated 22/2/2007 rejecting the request of the Respondent No. 1 under Section 11(3) read with Section 8(d) of the Act. The Respondent No. 3 after hearing the Respondent No. 1 and Respondent No. 2 allowed the appeal and quashed and set aside the order dated 22/2/2007 passed by the Respondent No. 2 and further directed the Respondent No. 2 to furnish the information sought by the Respondent No. 1 vide application dated 22/11/2006 within a period of 15 days.

4. Feeling aggrieved by this impugned order, the Appellant challenges the impugned order on various grounds as set out in the memo of appeal. The Appellant has also filed civil miscellaneous application duly supported by an affidavit alongwith the memo of appeal praying an interim relief to stay the execution and operation of the impugned order. The Commission after hearing the learned advocate for the Appellant stayed the operation of the impugned order. The notices were issued to the Respondents. Shri P. Kamat appeared for the Respondent No.1 and Shri A. Gaude, L.D.C. from the office of the Respondent No. 2 remained present as an authorized representative of the Respondent No. 2.

5. The Respondent No. 1 filed the reply. The Respondent No. 1 raised the preliminary objection stating that the present appeal is not maintainable by a partner of a firm in his individual capacity as Respondent No. 2 had issued the notice to M/s. Hira Films Exhibitors and the objection was also filed before the Respondent No. 2 by M/s. Hira Films Exhibitors and not by the Appellant in his personal capacity. The Appellant also filed the rejoinder. The arguments of both the learned advocates Shri P. Kamat as well as Shri Pangam for the Appellant were heard.

6. Shri Pangam, the learned advocate for the Appellant submitted that the Appellant is a partner of Hira Films Exhibitors as it is clearly mentioned in the appeal memo. He also relied upon the decision of the Hon'ble Supreme Court reported in AIR 1965 SC 1411 and AIR 1965 SC 1413, and submitted that as per the said decision of the Hon'ble Supreme Court, a firm is strictly not a person but is association of persons. He has also drawn the attention of the Commission to the provisions of sub-section (1) of Section 19 of the Act and submitted that only a person can prefer an appeal.

7. Shri Kamat, learned advocate for the Respondent No. 1 submitted that the objection before the Respondent No. 2 was filed by the firm and not by the partner and therefore, the Appellant has no locus standi to file the present appeal. We have gone through the appeal memo as well as the miscellaneous application filed by the Appellant as well as the affidavit in support thereof. In the appeal memo the corrections have been made whereas the miscellaneous application as well as in the affidavit the Appellant is mentioned as Hira Films Exhibitors through its partner Shri Pravin H. Zantye whereas in the appeal memo it has been corrected as Shri Pravin Zantye, Partner of Hira Films Exhibitors. Therefore, the Hira Films Exhibitors who was third party before the Respondent No. 2 has filed the present second appeal. We do not see anything wrong in filing the appeals by the partner of the firm in case the partner is aggrieved by the decision of the first Appellate Authority. That apart, the application for stay as well as the affidavit filed by the Appellant clearly shows that Hira Films Exhibitors are the Appellant. We, therefore, overrule the objection raised by the Respondent No. 1.

8. The Appellant has challenged the impugned order on various grounds. We are not going into the various grounds and or into the merits of the case. We are restricting ourselves to only one ground i.e. no notice was given by the Respondent No. 3 to the Appellant before passing the impugned order thereby violating the principles of natural justice.

9. Admittedly, the Appellant herein was not the party before the Respondent No. 3 nor the Respondent No. 3 has issued any notice to the Appellant before passing the impugned order. The Respondent No. 3 has quashed and set aside

the order passed by the Respondent No. 2 which was decided in favour of the Appellant. Therefore, it was incumbent on the part of the Respondent No. 3 to give notice of the appeal to the Appellant.

10. In the present case, the Respondent No. 1 did not challenge the order dated 22/2/2007 passed by the Respondent No. 2 as the Respondent No. 1 filed the first appeal before the Respondent No. 3 much before of passing the order dated 22/2/2007 by the Respondent No. 2.

11. The procedure for disposal of application by the Public Information Officers is laid down in Section 7 of the Act. In the instance case, the Respondent No. 2 thought it fit to give the notice to the Appellant under Section 11 of the Act. In terms of sub-section (1) of Section 11 of the Act, wherever the Public Information Officer feels that the information sought by the applicant pertains to the third party, the Public Information Officer has to issue the notice within 5 days from the receipt of the request requiring the third party to make representations if any within 10 days as required by sub-section (2) of Section 11. The application of the Respondent No. 1 was dated 22/11/2006 and the Respondent No. 2 issued notice to the Appellant vide letter dated 30/11/2006 which is after the expiry of 5 days. Thus, the Respondent No. 2 did not comply with the provisions of sub-section (1) of Section 11 of the Act. Further, the Respondent No. 2 has given only 5 days notice to the Appellant to make representation if any as against the time limit of 10 days provided in Section 11 of the Act. In reply to the said notice, the Appellant vide letter dated 22/12/2006 had informed the Respondent No. 2 that though the said letter had mentioned that it was sent by hand delivery, the said communication was received by them through the post box No. 310, Panaji on 14/12/2006. Being so, the Respondent No. 2 has not acted as per the provisions of Section 11 of the Act. The application was made by the Respondent No. 1 on 22/11/2006 and keeping in view the notice to the third party as required by Section 11 of the Act, the total time available to the Respondent No. 2 to dispose off the application of the Respondent No. 1 was 40 days. Thus, the Respondent No. 2 ought to have disposed off the application of Respondent No. 1 on or before 02/01/2007, whereas the Respondent No. 2 passed an order on 22/2/2007 which is after the expiry period laid down in the Section 7 of the Act. The Respondent No. 1, therefore, has rightly filed the first appeal before the Respondent No. 3.

12. The question that arises for our consideration is as to whether the Respondent No. 2 could have passed an order after the expiry of the specified period laid down in Section 7 of the Act and that too after filing the first appeal before first Appellate Authority. In our considered view, the Public Information Officer ceases to have jurisdiction the moment the period laid down in Section 7 of the Act expires and applicant has resorted to the provision of Section 19(1) of the Act. The Respondent No. 2 ought not to have passed any order on 22/2/2007 when the subject matter was before the Respondent No. 3 being the Appellate Authority. Being so, the Respondent No. 2 erred in passing the order dated 22/2/2007. In fact, the Act does not provide for passing any order by the Public Information Officer, if he comes to a conclusion that the information requested has to be given. If he comes to a conclusion that the information cannot be disclosed, he has to pass an order rejecting the request and giving his reasons. If he rejects the request after taking into consideration the representation received from the third party, as in the present case, he has to pass his order within 40 days of the date of the application and not thereafter. In such a case, the deemed refusal takes effect only after 40 days and not 30 days. There is no question of further refusing the information. However, the information can be given even thereafter by the Public Information Officer on his own even if an appeal is pending against the deemed refusal of information.

13. Shri P. Kamat, the learned advocate for the Respondent No. 1 submitted that the Act does not provide for giving any opportunity of being heard to the third party by the first Appellate Authority. Shri Pangam, the learned advocate for the Appellant submitted that though there are no specific provision of giving the notice to the third party by the first Appellate Authority, he submitted that the principle of natural justice demands that the opportunity of being heard is to be afforded particularly when an order is passed against the third party. Shri Pangam, therefore, submitted that the first Appellate Authority has quashed and set aside the order of the Respondent No. 2 which was in favour of the Appellant and therefore, Respondent No. 3 ought to have given an opportunity to the Appellant before passing an impugned order. Shri Pangam also drew our attention to the provision of sub-section (4) of Section 19 of the Act and submitted that the expression "as the case may be" not necessary as it does not changes the meaning and he, therefore, submitted that the said provision has to be construed as a reference to the first Appellate Authority as no appeal lies to

the Commission against the decision of the Public Information Officer.

14. On perusal of the provisions of the sub-section (4) of Section 19 of the Act, it is seen that the expression as the case may be refers to the Central Information Commission or State Information Commission and therefore, we do not find any ambiguity in the said provision. The said provision of sub-section (4) of Section 19 of the Act provides that the Commission has to give the reasonable opportunity of being heard to the third party whenever any decision of the Public Information Officer is the subject matter in appeal pertaining to the third party. There is no doubt that the Commission while disposing the appeals where the subject matter pertains to the third party has to afford an opportunity to the third party before deciding any appeal. Similarly, under Rule 5 of Goa State Information Commission (Appeal Procedure) Rules, 2006, the Commission has to also hear the third party. The Commission in series of cases has held that though no separate Rules are prescribed for the disposal of the first appeal by the first Appellate Authority, the principles of the of Goa State Information Commission (Appeal Procedure) Rules, 2006 which are applicable for the disposal of the second appeal by the Commission shall be followed by the first Appellate Authority. The Act and the Rules framed thereunder provided that the Commission has to hear the third party and therefore, the Commission is also of the view that the first Appellate Authority has to give an opportunity to the third party whenever the decision of the Public Information Officer is challenged before the first Appellate Authority pertaining to the third party. This is also keeping in view, the principles of natural justice.

15. In the present case, admittedly, the Respondent No. 3 did not give any notice to the Appellant before passing the impugned order and therefore, the Respondent No. 3 has passed the impugned order in gross violation of the principles of the natural justice. On this count alone, the Appellant is bound to succeed in the present appeal.

16. The Respondent No. 2 in his order has made a mention that the reference was made to this Commission seeking advise and comments vide letter dated 21/1/2007 and the reply of the Commission received by the Respondent No. 2 dated 19/2/2007 informing that no comments can be offered and the Respondent No. 2 may decide the application as deem fit within the scope of Section 7 read

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with proviso to sub-section (1) of Section 11. In fact, the Respondent No. 2 ought not to have made any reference to the Commission seeking advice. The said reference was unwarranted and uncalled for as the Respondent No. 2 was deciding the matter in quasi-judicial capacity and has to take decision independently. Further, on perusal of the records of this Commission, it is noticed that the Secretary to the Commission has sent a reply dated 19/2/2007 which was also uncalled for as he should not have offered any comments or given any advice to the Respondent No. 2. The matter was also not placed before the Commission by the Secretary to the Commission and the said letter dated 19/2/2007 was issued by the Secretary himself which was not within his competence or jurisdiction. We, therefore, hereby direct Secretary to the Commission and also the other officers and staff not to entertain any request either from Public Information Officers or first Appellate Authority seeking any advice on any application moved by the citizens seeking information under the Act. Similarly, we also direct the Public Information Officers and first Appellate Authorities not to make any reference to the Commission seeking advice in the matter of application of the citizens seeking information.

17. In these circumstances, we pass the following order: -

ORDER

We hold that the order dated 22/2/2007 passed by the Respondent No. 2 is a nullity and non-est. We hereby quash and set aside the impugned order dated 27/3/2007 passed by the learned Respondent No. 3. We direct the Respondent No. 3 to afford an opportunity to the Appellant and decide the matter on merits within 30 days from the date of the receipt of this order.

Announced in the open Court on this 24th day of May, 2007.

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

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