

GOA INFORMATION COMMISSION

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

2nd Appeal No.132/07-08

1. Margao Municipal Council,
Through the Chief Officer,
Margao – Goa.

2. The Public Information Officer,
Margao Municipal Council,
Margao – Goa.

.....

Appellants

V/S

1. K.U. John,
Marble Apartments,
Murida, Fatorda, Margao –Goa.

.....

Respondent

CORAM:

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

(Per G.G. Kambli)

Dated: 08/05/2008.

ORDER

The Respondent vide his application dated 04/12/2007 forwarded a copy of the order bearing No. MNC/TCH/08-08/108 dated 19/11/2007 issued to Mrs Maria Fernandes imposing fine of Rs. 35,000/- for occupying 7 flats without obtaining occupancy certificates and sought the following information from the Appellant No. 2, under the RTI Act, 2005 (for short "the Act").

"1. Whether the said fine of Rs. 35,000- has been paid by said builder Mrs. Maria Fernandes? ...2/-

2. Sir, if fine is not paid, whether any further action has been taken by your Official?

3. What action will you initiate if builder neither pays the fine of Rs. 35,000/- nor further Rs. 100/- per day per flat?"

2. Having not received any response from the Appellant No. 2, the Respondent preferred an appeal before the First Appellate authority on 07/01/2008. The first Appellate Authority by his order dated 25/01/2008 directed the Appellant No. 2 to furnish the information to the Respondent within a period of 10 days as per the appealable dated 04/12/2007.

3. Aggrieved by the said order of the First Appellate Authority (hereinafter referred to as the "impugned order"), the Appellant filed the second present appeal under section 19 (3) of the Act, inter-alia, on the grounds that the First Appellate Authority being quasi judicial and since the decisions are applicable ought to have given the reasons for passing the impugned order.

4. The Respondent filed the reply and raised the preliminary objection that the PIO i.e. Appellant No. 2 cannot be said to be a person for the purpose of section 19 (1) of the Act and therefore he cannot challenge the order of the First Appellate Authority. The Respondent has also stated that the order dated 12/02/2008 passed by this Commission maintaining status quo is illegal and bad-in-law. On merit, the Respondent submitted that the Appellant No. 2 had deliberately with malafide intention has denied the information. As can be seen from the records Appellant No 2 vide his letter dated 04/01/2008 had rejected the request of the Respondent on the ground

that the said information doesn't fall within the ambit of section 2 (f) of the Act and that the information sought by the Respondent is not compiled/record/available or stored by the council in any form.

5. Admittedly, the Appellant No. 2 had issued an order dated 19/11/2007 imposing a fine of Rs. 35,000/- for occupying 7 flats without occupancy certificate on Mrs. Maria Fernandes and further fine of Rs. 100/- per day per flat. The Respondent as a citizen is entitled to know whether the fine imposed by the Appellant No.2 have been recovered from the person concerned as it is a revenue of the Appellants. The Respondent wanted to know only the status report on the order passed by the Appellant No. 2. which is already on record and available with the Appellants. If the Appellant No. 2 has not taken any steps to implement the said order, the Appellant No. 2 could inform the same to the Respondent. We do not find any reasons for withholding the disclosure of the information on these points. If the fine has been paid, the records will speak for themselves. If the fine is not paid, the Appellant No. 2 could have informed the same based on the records. The records maintained by the Appellant would show whether the fine is paid or not.

6. It is to be noted that the object of the Act is to bring transparency and accountability of the Public Authority to the Citizen. Having issued an order imposing a fine and not informing the citizen about the implementation of the said order will certainly defeat the very purpose of the Act. The Respondent has sought the information on the implementation of the order passed by the very Appellant No. 2 and such a information cannot be denied

on the ground that it does not fall within the definition of the term information. It is also pertinent to note that the Respondent did not seek any reasons for not implementing the order but wanted to know the factual position.

7. Turning now to the preliminary objection raised by the Respondent that the present 2nd appeal is not maintainable as the Appellant No. 2 being Public Information Officer cannot be said to be a person for the purpose of section 19 (1) of the Act. In terms of sub-section (1) of section 19 of the Act any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7 or is aggrieved by a decision of Public Information Officer may within 30 days from the expiry of such period or from the receipt of such decision preferred an appeal to the First Appellate Authority. Thus the provision of subsection (1) of section 19 of the Act makes it abundantly clear that the appeal under sub-section (1) of section 19 of the Act can be filed only by a citizen against the decision of the Public Information Officer. This position of law was already interpreted by this Commission in appeal No. 7/2006 Under Secretary (Revenue), Secretariat V/s Shri V.B. Prabhu Verlekar and Joint Secretary (GA) and the Commission had also reiterated and maintained a similar view in appeal No. 76/2007. In this appeal also we maintain the same view. Coming now to the provisions of 2nd Appeal as contained in sub-section (3) of section 19 of the Act, a 2nd Appeal against the decision under sub-section (1) lie to the Information Commission within 90 days.

...5/-

8. The Appellant No. 1 is the Margao Municipal Council, which is the Public Authority. As per the definition of the expression "Third Party" as contained in section 2 (n) of the Act Third party also includes a Public Authority. The Appellant No. 2 has not rejected the request of the Respondent on the ground that the information sought by the Respondent pertains to the 3rd party. It is also not the case of the Appellant No. 2 that the Appellant No. 1 has directed the Appellant No. 2 not to disclose the information sought by the Respondent. Hence, the Public Authority is also cannot be said to be aggrieved person of the decision of the First Appellate Authority. On this count also the appeal is not at all maintainable.

9. In the result, we pass the following order:-

O R D E R

The Appeal is dismissed as not maintainable and also on merits. The Status quo maintained vide order dated 12/02/2008 stands vacated. Announced in the open court on this day of 8th May, 2008 at 11.00 a.m.

Sd/-
(Shri G.G. Kambli)
State Information Commissioner

Sd/-
(Shri A. Venkataratnam)
State Chief Information Commissioner