

GOA INFORMATION COMMISSION

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

Appeal No. 149/2007/IFB

Shri. R. G. Furtado,
F3/A!, Virginkar Residency,
Ambaji, Fatorda - Goa.

..... Appellant.

V/s.

1. First Appellate Authority,
The Chief Inspector,
Inspectorate of Factories & Boilers,
Altinho, Panaji – Goa.
2. Public Information Officer,
Shri. R. T. Korgaonkar,
The Inspector of Boilers,
Inspectorate of Factories & Boilers,
Altinho, Panaji – Goa.

..... Respondents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 19/06/2008.

Appellant present in person.

Respondent No. 2 present in person. Respondent No. 1 absent.

ORDER

This disposes off the second appeal filed by the Appellant on 24/03/2008 against the order dated 5/3/2008 (hereinafter referred to as the impugned order) under the Right to Information Act, 2005 (RTI Act for short) on the grounds mentioned in the appeal. Notices were issued and the Appellant as well as the Respondent No. 2, Public Information Officer, have appeared in person. They have also submitted their written statements.

2. The short point in this appeal is whether any information not available with the public authority can be asked by a citizen who requests it to be obtained by the public authority from a private institution, a company in this case, and furnish it to him. The Appellant says that the information has to be obtained from the private company and given to him simply because the public authority

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has an "access" to the records maintained by the private company by way of statutory provisions, the Factories and Boilers Act and the Rules made thereunder.

3. A little background will be necessary to appreciate the request and its denial. The Appellant by his request dated 17th December, 2007 approached the Public Information Officer, Respondent No. 2, herein, with a request to give him information on 7 points. The Public Information Officer has given the information whatever was available with him and refused the information which he received after furnishing his reply to the Appellant and also refused to call for the information from the private company and furnish the same to the Appellant. The "Safety Audit Report for the year 2006-07 of the Zuari Industries Limited", a private company hereinafter referred to as ZIL was received by the Public Information Officer from the company on 23/01/2008 whereas the date of the furnishing the reply by the Public Information Officer to the Appellant was 14/01/2008. Meanwhile, the Appellant filed his first appeal which was pending disposal before Respondent No. 1 as on 23/01/2008. The case of Appellant is that, as his first appeal was pending in the Department and the report is available with the Public Information Officer from 23/01/2008, the Public Information Officer could have given him a copy without having to make another request for the same under the RTI Act. We agree with him and direct the Public Information Officer to give this report, of course, after collecting the necessary fees.

4. The returns, reports and other information which were asked by the Appellant and are not available with the Public Information Officer are (i) Safety assessment study carried out by ZIL during 2006-07; (ii) the address of the National Safety Council, U.S.A. which has awarded the safety award to the ZIL; (iii) the information regarding an accident in the ZIL in which one employee by name Mr. Das was hurt and (iv) the names of Safety Committee members appointed by ZIL. According to the Appellant, this information has to be submitted by the ZIL in terms of the Factories Act and the Rules made thereunder. Even if the company has not submitted the information voluntarily, the Department has to collect it and pass it on to him. Now, such a presumption is derived by Appellant on reading section 2(f) of the RTI Act. Apart from other things, the definition of information mentions "such information relating to any private body which can be accessed by a public authority under any other law for

the time being in force". The "access" which is mentioned in the definition is about a legal provision through which a private body has already submitted the information to the public authority. As we understand the definition, it only means (i) that the record of information should already be available with the public authority when a request is made; (ii) it could be in any form like models, samples, papers, reports and also data in electronic form; (iii) that it can relate to public authority's records or of a private body, if the information was supplied already by the private body to the public authority under any law for the time being in force. It is in that context the word "access" is to be understood and not in the way the Appellant interprets it i.e. by calling for the records from the private body for the sake of satisfying the request of the Appellant. The words "which can be accessed by a public authority under any other law for the time being in force" have to be read as a provision clarifying the various records already available with the public authority. These are the (i) records of public authority; (ii) the records of the private body which are submitted by it in pursuance to the requirements of law and (iii) other records of private bodies which are submitted to the public authority voluntarily. Of the three types mentioned above, only the first two can be given by the Public Information Officer to the citizens, that too keeping in view the provisions of consultation provided under section 11 of the Act. With this view of the matter, the request by the Appellant of the non-existing record is not maintainable and the Public Information Officer as well as first Appellate Authority are correct in refusing to call for the information and forwarding it to the Appellant.

5. The Appellant, thereafter, took up the plea that the ZIL is a third party and he is entitled for third party information. In his rejoinder dated 8/5/2008 before us at para 2, he mentioned that "the RTI Act provides for the public authority to access the third party information". By this, he wants to say that the information from the ZIL which is third party has to be obtained and forwarded to him. We do not find any such provision in the RTI Act. A bare reading of the definition of third party under section 2(f) of RTI Act shows that the third party means "a person other than the citizen making a request for information". The ZIL is a third party in so far as it is neither the citizen requesting information nor the public authority obliged to give the information. However, we do not find any provision that the documents have to be obtained from the third party to be furnished to the citizen. All that the section 11 provides is that if the information already held by the public authority belongs to a third party, before parting it to

the Appellant, the Public Information Officer has to give an opportunity to the third party regarding the request and take its objections into consideration while making up his own mind whether to give the information or to refuse the information. The RTI Act does not say that if no information is furnished by the third party, and simply because the citizen has asked for it, the public authority is duty bound to call for the information and give it to the citizen. No doubt, the third party, in this case ZIL, is duty bound to send certain information/returns to the Factories and Boilers Department of the Government under the various laws and rules. If they have not done so, it is for the Department to take action against the defaulting party under its own powers. There is no way this Commission can compel the public authority to call for the reports from the third party and forward it to the citizen. With this view of the matter, we are unable to agree with the arguments put forth by the Appellant and reject the same.

6. However, as already ordered above, the Public Information Officer has to give the information already available with him regarding the safety reports for 2006-07 immediately and in any case not later than 15 days from the date of this order. The appeal is, therefore, partly allowed.

Announced in the open court on this 19th day of June, 2008.

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

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