

## **GOA INFORMATION COMMISSION**

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

Appeal No. 18/2007-08/NGPDA

Shri. V. A. Kamat,  
G-1, Ravindra - A,  
Next to Hotel Ameya,  
Opp. St. Inez Church,  
St. Inez, Panaji - Goa.

..... Appellant.

V/s.

1. Public Information Officer,  
The Member Secretary,  
North Go Planning & Development Authority,  
Archdiocese Bldg., 1<sup>st</sup> Floor,  
Mala, Panaji - Goa.
2. First Appellate Authority,  
The Chief Town Planner,  
Town & Country Planning Department,  
Dempo Tower, 2<sup>nd</sup> Floor,  
Panaji - Goa.

..... Respondents.

### **CORAM:**

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

(Per A. Venkataratnam)

Dated: 10/01/2008.

Appellant in person.

Adv. S. H. Naik for Respondent No. 1.

Authorized representative for Respondent No. 2.

### **ORDER**

This is about the request by the Appellant to the Respondent No. 1 to provide him information about all the developmental permissions granted under the draft revised development plan from 8/9/2006 till the date of his application. Four specific requests alongwith certified copies were requested by the Appellant. The Public Information Officer has given a reply to the request No. 1. He did not give any reply to the request No. 3 regarding the changes in the zones. However, for the other two questions he has asked the Appellant to visit his office and make a specific request for the documents wanted by him after

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inspecting all the files. It is the case of the Respondent No. 1 that the information asked for is voluminous as the details of 287 cases alongwith the plans and the supporting documents were asked by the Appellant. He has no objection to disclose the information and did not claim any exemption from disclosure under sections 8 and 9 of the Right to Information Act, 2005 (for short the RTI Act). The reply by him was given on 16<sup>th</sup> March, 2007 while the application was dated 19<sup>th</sup> February, 2007. When the Appellant refused to inspect the documents saying that his request is specific and not vague and filed his first appeal before the Respondent No. 2 on 26<sup>th</sup> March, 2007, the first Appellate Authority has allowed the appeal and directed the Public Information Officer to give the information alongwith the documents after payment of the cost of the documents. Immediately thereafter, on 30<sup>th</sup> April, 2007, the Public Information Officer informed the Appellant to pay Rs.192/- and take the documents. The Appellant stuck to his argument that he is not required to pay any fees as he is entitled to free information under section 7(6) of the RTI Act and filed this second appeal to this Commission on 17<sup>th</sup> June, 2007 praying among other things to direct the Respondent No. 1 to give him the information free of cost and also to levy penalty of Rs.250/- per each day on Respondent No. 1 from 21/3/2007 till the information is given by the Respondent No. 1.

2. Notices were issued. Replies were filed by both the Respondents. The matter was posted for arguments. However, written arguments were filed by the Advocate for the Respondents and also by the Appellant.

3. The Appellant has taken basically the point that he is entitled to free information and that he was misled by the Respondent No. 1 by his letter dated 19<sup>th</sup> March, 2007 stating that the information "will cost several thousands of rupees" without actually mentioning the amount and also not attaching the calculation sheet how the amount was arrived; and that the information requested by him was specific and not vague and therefore, there was no need to inspect the files of the Respondent No. 1.

4. To understand the contention of the rival parties, it is very necessary, to interpret section 7 of the RTI Act. Section 7 of the RTI Act deals with the disposal of the requests for information by the citizens and has nine sub-sections in all. Section 7(2) deals with the deemed refusal. Sub-section (4) deals with the

assistance to be provided by the Public Information Officer to sensorily disabled citizens. Sub-section (7) deals with the third party information. Sub-section (8) deals with the details to be provided by the Public Information Officer in case he rejects the request and sub-section (9) deals with the format for providing information and the assessment of disproportionate diversion of resources of the public authority. In the case before us we are not concerned with all these sub-sections. We are concerned only with the sub-section (1), (3), (5) and (6) of section 7 to deal with the prayers of the Appellant.

5. We have already held in a number of other cases that the facility of getting information free of charge under sub-section (6) of section 7 after the time limit laid under section 7(1), is available to the citizens only of the documents mentioned in sub-section (5) thereof, namely, printed documents and information available in electronic format. The Appellant chose to differ with our view and suggested that Central Information Commission has already held in a number of cases that the information has to be provided free of charge by the Public Information Officer if he did not supply within the time limit laid down in section 7(1) of the RTI Act. While we will take up the argument advanced by the Appellant for holding such a view, we make it very clear in the beginning that we are not bound by the orders of the Central Information Commission as it is not an Appellate body over this Commissions' orders.

6. Section 7(1) of the RTI Act mandates that the information requested has to be provided "as expeditiously as possible" by the Public Information Officer. A maximum time limit is also set in case different Public Information Officers understand the word "expeditiously" in different ways. This time limit of 30 days prescribed under section 7(1) is maximum time limit and not a facility given to the Public Information Officer to sit on the request for 29 days. Secondly, the said sub-section provides that the information has to be provided on payment of such fees as may prescribed. The Government of Goa, competent authority for the public authority in this case, has already prescribed the fees by its notification dated 15/2/2006 under Rule 3 (i) and (ii) of the Goa Right to Information (Regulation of fee and cost) Rules, 2006, hereinafter referred to as the "Fee and cost rules". It is incumbent on every citizen requesting for information under section 6(1) to pay Rs. 10/- in terms of Rule 3(i) of the fee and cost rules. Some of the Public Information Officers have strictly interpreted this rule and rejected

requests for information on the ground that the fee is not paid. The fee should accompany the application, we may call it as "Application fee" and is, no doubt, a necessary condition for providing the information to all citizens except those below the poverty line and who are exempted under proviso to section 7(5). However, this Commission has already held that the non-payment of this application fee initially is not fatal and is a remediable defect. In other words, we have held that the information cannot be refused only on this ground and the fee could be collected at the time of providing the information. Besides this application fees, the citizen has to pay the cost of information as provided under section 7(1) of the RTI Act. This cost also has been prescribed by the Goa Government in the "Fee and cost rules" at Rule 3(ii). The payment of the cost of the information is also a necessary condition for obtaining the information under the RTI Act. So we have, therefore, seen that the section 7(1) not only prescribes the time limit for disposing a request for information, it also lays down a necessary and important condition of payment of the cost of the information. The maximum time limit, however, could be relaxed in two circumstances namely, when the request for the information is transferred by one public authority to another under section 6(3) of the RTI Act and when the application was handed over to the Asst. Public Information Officer (APIO), under proviso to section 5(2). In both the cases, the Public Information Officer gets another 5 days to reply to the request for information. There is one exceptional circumstance, however, mentioned at proviso 7(1) wherein information has to be provided within 48 hours if it concerns the life and liberty of the person.

7. The payment of the cost of information as well as the application fee of Rs.10/- is waived in respect of persons who are below poverty line as may be determined by the appropriate Government. This provision is laid down at proviso to section 7(5). It is also laid down in the same proviso that the fees prescribed by the competent authority should be reasonable. This is not an issue before us. Finally, there is one circumstance under which the information can be provided free of charge and i.e. under section 7(6) which is being claimed by the Appellant at present. A plain reading of section 7(5) and section 7(6) together shows very clearly that only the fee which was levied under sub-section (5) is exempted as mentioned by us earlier if the information is not supplied within time. The fee/cost of information could be collected by the Public Information Officer under section 6(1), section 7(1), section 7(5) only. While exempting the

payment of sub-section (6) of section 7, it does not mention the fees/cost levied under section 7(1) and 7(6). The non-abstente clause at the beginning of section 7(6) refers to only main section 7(5) and not to its proviso. This is because, the proviso to section 7(5) does not levy any fees as such but puts a restriction on the competent authority in terms of reasonableness of the quantum of this fees and to exempt persons under the below poverty line. It does not speak of any documents or information. Therefore, it cannot be said that section 7(6) exempts citizens from payment of all charges for all types of information, if it could not be provided by the Public Information Officer within the time limit allowed for him under section 7(1) of the RTI Act. It is, in fact, not a facility given to a citizen but is in the nature of a penal provision for delayed supply of information, though the penalty is paid by the public authority by way of losing its income and not paid by the Public Information Officer.

8. We now come to the arguments of the Appellant claiming the exemption of payment. The main arguments of the Appellant are the decisions of the Apex Court in the case of Balkrishna Chetty Vs. State of Madras [1961(2) SCR 736] and Para 13 of Chapter XI of the "Interpretation of statutes" by N. S. Bindra. The first citation is about the words "subject to" appearing in sub-section (5) of section 7. We have already examined this provision and stated that section 7(6) is a kind of exemption provided for the fees leviable under section 7(5). We have no problem in interpreting that fees payable under section 7(5) is exempted under section 7(6) if the time limit is not adhered to by the Public Information Officer. In the instant case, the documents required by the Appellant do not come under section 7(5) thereof. So the Supreme Court citation is, therefore, not of any help to the Appellant. Next is the opinion quoted by the Appellant stating that "It is not open to add to the words of the statute or to read more in the words than is meant, for that would be legislating and not interpreting a legislation." We are also of the same opinion that no court can legislate and we are not doing that. Neither we add anything nor subtract anything from the words of section 7(5) and section 7(6) of the RTI Act. We have only mentioned what we have understood from a plain reading of section 7(5) and 7(6), taken together. We, therefore, reject the prayer of the Appellant for free supply of documents requested.

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9. Finally, the Appellant requested for the punishment of the Public Information Officer and quoted our own order passed in Appeal No. 23/2006/DM. We still hold the same view that punishing the Public Information Officer is not the objective of the RTI Act. In this case, we have seen that the Public Information Officer has not given the information in time. However, we could not see prime facie, any malafides on the part of the Public Information Officer. It is true that he tried to avoid giving the information, in the beginning, by not mentioning exact amount payable by the Appellant and asking him to come for inspection of the records, when it is not called for. However, he did give some information, though incomplete, within the time limit. Further, when the first Appellate Authority directed him to do so, he informed the Appellant to deposit Rs.192/- and collect the information. We are, therefore, satisfied prime facie, that the Public Information Officer's action is diligent and bonafide. We, therefore, reject the prayer of the Appellant to punish the Public Information Officer.

10. For the above reasoning, the appeal is dismissed. The Public Information Officer is directed to give the information on payment of the cost by the Appellant.

Pronounced in the open court on this 10<sup>th</sup> day of January, 2008.

Sd/-

(A. Venkataratnam)

State Chief Information Commissioner, GOA.

Sd/-

(G. G. Kambli)

State Information Commissioner, GOA.

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