

GOA INFORMATION COMMISSION

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

Appeal No. 23/SIC/2008

Mr. Dinesh Vaghela,
2nd Floor, Navagauri Apt.,
Opp. ICICI ATM,
Alto Porvorim, Bardez – Goa.

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Appellant.

V/s.

1. Public Information Officer,
The Block Development Officer,
Mapusa, Bardez – Goa.
2. First Appellate Authority,
The Deputy Director of Panchayats,
North Goa, Panaji – Goa.

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Respondents.

CORAM:

Shri G. G. Kambli
State Information Commissioner

(Per G. G. Kambli)

Dated: 11/07/2008.

Adv. Dinesh Naik for the Appellant.

Authorized representative Shri. G. V. Gaonkar for Respondent No. 1.

Respondent No. 2 absent.

J U D G M E N T

The Appellant challenges the order dated 23/01/2008 of the Respondent No. 2 passed in appeal No. IST. INFO No. 1/2008 on various grounds as set out in the memo of appeal under sub-section (3) of section 19 of the Right to Information Act, 2005 (for short the Act). The appeal memo is accompanied by an application for condonation of delay duly supported by an affidavit.

2. The facts of the case, in brief, are that the Appellant vide his application dated 14/11/2007 sought information on 5 points under the Act from the Respondent No. 1 with respect to the letters dated 25/05/2005, 01/06/2005, 16/04/2007, 16/05/2007 and the order of the Respondent No. 1 dated 16/04/2007. As the Appellant did not receive any reply from the Respondent No. 1 within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7 of the Act preferred appeal before the Respondent No. 2 under section 19(1) of the Act. The Respondent No. 2 disposed off the appeal on 23/01/2008 on the ground that the Respondent No. 1 furnished the documents to the Appellant as requested in his application dated 14/11/2007.

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3. During the course of the proceedings, one Shri. Kashinath Shetye moved an application under section 11 of the Act to implead him as a third party as the information sought by the Appellant pertains to him. The said application of Shri. Shetye was granted and Shri. Kashinath Shetye was allowed to participate in the proceedings as a third party as the information sought by the Appellant at point No. 2 appears to be that of Shri. Kashinath Shetye. The Respondent No. 1 filed his reply. Shri. Kashinath Shetye who was allowed to participate in the proceedings as a third party did not file any say in writing and chose to argue the matter orally.

4. During the course of the hearings, Shri. Kashinath Shetye raised the objection stating that the present appeal is barred by law of limitation and therefore, arguments on the application for delay as well as on merits of the matter were heard. Before I discuss the matter on merit, I will first deal with the application on condonation of delay. The order under challenge is dated 23/01/2008. The certified copy was applied on 28/04/2008 and the same was made available to the Appellant on the same day. The present appeal has been filed before this Commission on 8/5/2008. Thus, there has been a delay of 14 days after excluding 1 day which are taken for obtaining the certified copy.

5. Shri. Dinesh Naik, the learned Advocate for the Appellant submitted that the Appellant was expecting the final order of the Respondent No. 2 and therefore, Appellant was awaiting decision of the Respondent No. 2. Since the Appellant did not receive any communication from the Respondent No. 2, the Appellant contacted the Advocate who after perusing the proceedings sheet of the appeal before the Respondent No. 2 advise the Appellant to prefer an appeal. He further contended that the Appellant is a layman and was not aware of the complication of the law and he was bonafidely under the impression that the Respondent No. 2 will communicate its decision and therefore, the Appellant has shown sufficient cause in as much as the Respondent No. 2 did not communicate in writing her final decision on the appeal filed by the Appellant. He, therefore, prayed that the delay be condoned. On the other hand, Shri. Kashinath Shetye who is the third party contended that the Appellant is personally representing and presenting his case even before High Courts and therefore, he is not a layman. The Respondent No. 1 did not raise any objection in his reply but subsequently in his reply dated 30/05/2008 (sic) raised the point of limitation.

6. I have gone through the application for the condonation of delay which

has been supported by an affidavit and also considered the argument advanced by the learned Advocate for the Appellant as well as by the third party. I am satisfied that the Appellant was under bonafide belief that the Respondent No. 2 will pass final order and communicate the same to the Appellant. The decision of the Respondent is also not communicated to the parties. Therefore, the Appellant has shown sufficient cause for condoning the delay and therefore, I allow the application for condonation of delay and proceed the matter to decide on merits.

7. The Appellant at point No. 1 sought certified copies of the report submitted by the Respondent No. 1 to the Directorate of Panchayats pursuant to the memo dated 30/01/2007 in respect of the illegal construction and unauthorized commercial activities of Smt. Sanyogita Shetye and Mr. Kashinath Shetye at Navagauri Apartments Co-operative Housing Society at Alto Porvorim. The Respondent No. 1 in his reply dated 21/01/2008 had informed the Appellant that no report was submitted to the Respondent No. 2 pursuant to the memorandum dated 30/01/2007. The Respondent No. 1 also informed the Appellant that the inspection of the site was conducted by the Extension Officer (V.P.) and Extension Officer (R.E.) on 9/5/2007 but no inspection report was prepared since the said memorandum dated 30/01/2007 was withdrawn by the Dy. Director of Panchayats, Panaji vide corrigendum dated 11/05/2007. Shri. Dinesh Naik, learned Advocate for the Appellant submitted that the Respondent No. 2 had sought the report from the Respondent No. 1 within 2 weeks and the Respondent No. 1 did not take any action though a considerable time was elapsed. He also pointed out that the said memorandum was withdrawn vide corrigendum dated 11/05/2007 which is much after three months and therefore, the Respondent No. 1 has not acted on the said memorandum dated 30/01/2007. The Appellant had sought the certified copies of the report. Since, no report was submitted to the Dy. Director of Panchayats, the question of furnishing any certified copy does not arise. The grievances of the Appellant that the Respondent No. 1 has not complied with the memorandum dated 30/01/2007 is outside the scope of the Act and this Commission also cannot take any action for non-compliance of the memorandum dated 30/01/2007 as this Commission has no jurisdiction in such matters.

8. Turning now to the point No. 2, the Appellant sought copies of the documents furnished by Shri. Kashinath Shetye and Smt. Sanyogita Shetye in compliance with the order dated 16/04/2007 of the Respondent No. 1. The Appellant also further wanted to know as to what action the Respondent No. 1

has taken to remove the illegal construction. The Respondent No. 1 had given the list of the documents submitted by Shri. Kashinath Shetye and Smt. Sanyogita Shetye in compliance with the order dated 16/04/2007. The grievance of the Appellant is that the Respondent No. 1 has not furnished the copies of the documents which the Block Development Officer had ordered Shri. Kashinath Shetye and Smt. Sanyogita Shetye to furnish in terms of the order dated 16/04/2007. The Respondent No. 1 submitted that these are the only documents which were submitted by Shri. Kashinath Shetye and his wife and after satisfying with those documents he did not take further action. The copy of the order dated 16/04/2007 passed by the Respondent No. 1 is not produced before me though during the course of the hearing, the learned Advocate pointed out that the Respondent No. 1 has sought the documents regarding ownership etc. In the absence of the said order of the Respondent No. 1 dated 16/04/2007, it is difficult to know what were the documents sought by the Respondent No. 1. The Appellant also did not mention in the memo of appeal the documents which the Respondent No. 1 directed Shri. Kashinath Shetye and Smt. Sanyogita Shetye to furnish. Therefore, it is not possible to verify whether the Respondent No. 1 has provided the copies of the documents sought by the Appellant at point No. 2.

9. At point No. 3, the Appellant sought copies of the inspection report/panchanama drawn by the Respondent No. 1 on the inspection carried out on 9/5/2007. The Respondent No. 1 informed the Appellant that the inspection was conducted but the panchanama was not drawn at site as there was no on going construction and report was not prepared as the memorandum dated 30/01/2007 was withdrawn. Here again, the Respondent No. 1 has informed the Appellant that no report was prepared and no panchanama was drawn of the inspection conducted on 9/5/2007. Therefore, it is for the Appellant to take up the matter before the competent authority for not preparing the report or for not drawing the panchanama of the said inspection conducted on 9/5/2007 as it is outside the scope of the Act and beyond the jurisdiction of this Commission. If the authority has not prepared report nor drawn the panchanama, the Public Information Officer cannot provide copies of the non-existing documents.

10. At point No. 4, the Appellant did not seek any information. He had just made a statement. Coming now to the last point at 5, the Appellant wanted to know the action taken by the Respondent No. 1 to protect the rights of the residence of the Navagauri Apartments Co-operative Housing Society and illegal construction and commercial activities going on day and night without any

authorized licence or permission of Panchayat under Panchayati Raj Act, 1994. The Respondent No. 1 informed the Appellant that there is no provision in the Goa Panchayati Raj Act to take action against illegal commercial activities by the Block Development Officer within the jurisdiction of the Village Panchayat areas and that the matter is to be dealt with by the Village Panchayat. Here again, the Respondent No. 1 has given the replies stating that the Block Development Officer is not empowered to take any action under the Panchayati Raj Act.

11. It will be seen from the above that the Respondent No. 1 has provided the information on all the points sought by the Appellant. However, the information was furnished on 23/01/2008. The application seeking information was made on 14/11/2007. In terms of sub-section (1) of section 7, the Public Information Officer has to furnish the information within 30 days from the receipt of the request. In the instant case, the Respondent No. 1 has furnished the information after the expiry of period of 69 days from the date of the application, and that too after filling first appeal. Hence, there is a delay of 39 days. The Respondent No. 1 has not explained the delay of these 39 days. During the hearing, attention of the Respondent No. 1 was drawn to this fact. To this, the Respondent No. 1 replied that the information was kept ready and the Appellant was asked to collect the same but the Appellant did not turn up. In order to verify this contention of the Respondent No. 1, the Respondent No. 1 was directed to produce a copy of the certificate of posting, extract of outward register and extract of postage register on 30/06/2008. Surprisingly, the Respondent No. 1 submitted that this statement was made by the Respondent No. 1 due to misunderstanding as it was related to other case and therefore, he has withdrawn the said statement made before this Commission on the date of the arguments. This clearly shows that the Respondent No. 1 did not take action on the application dated 14/11/2007 of the Appellant and also did not inform the Appellant to collect the information.

12. The attention of the Respondent No. 1 was also drawn to the para 7 of his reply dated 5/06/2008 wherein the Respondent No. 1 has made the following allegation: -

“That, the Appellant is an habitual Complainant against the Government authority without any valid ground”.

The Respondent No. 1 was directed to substantiate this allegation. In his subsequent reply filed on 30/05/2008 (sic), the Respondent No. 1 withdrawn the

said statement made in para 7 of his reply dated 5/6/2008. Thus, the Respondent No. 1 is also failed to substantiate the allegation made in para 7 of his reply.

13. As stated above, the Respondent No. 1 has not justified the delay of 39 days in providing the information to the Appellant. Infact, the information is to be provided as expeditiously as possible and not later than 30 days. Since, there is no explanation or justification for the delay shown by the Respondent No. 1, Respondent No. 1 is liable for action under section 20 of the Act. However, before imposing any penalty under section 20 of the Act for unexplained and inordinate delay of 39 days, the Respondent No. 1 is hereby directed to show cause why the penalty as provided under section 20 of the Act should not be imposed on him as prayed for by the Appellant. The Appellant has also prayed for compensation.

14. Before I part with this judgment and order, the Respondent No. 1 is hereby directed to be more careful in making a statement before this Commission without proper justification and evidence. The Respondent No. 1 is also directed to be more careful in making allegation against the citizen seeking information without substantiating the same.

15. In view of the above, I pass the following order: -

ORDER

Appeal is partly allowed. The Respondent No. 1 is directed to show cause as to why the penalty under section 20 should not be imposed on him for delay of 39 days and also as to why the compensation should not be awarded as prayed for by the Appellant on 25/07/2008 at 11.00 a.m. The Respondent No. 1 should file the details steps taken by the Respondent No. 1 from the date of the receipt of the application till the date of providing information. So far as the other prayers of the Appellant are concerned, the same are rejected as the Respondent No. 1 has provided the information to the Appellant.

Pronounced in the open court, on this 11th day of July, 2008.

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