

GOA STATE INFORMATION COMMISSION

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

Appeal No. 26/2007-08/FDA

Shri Orlando Sales
33, Dr. Dada Vaidya Road,
Panaji - Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Deputy Director,
Directorate of Food & Drugs Administration,
Panaji - Goa.
2. First Appellate Authority,
The Director,
Directorate of Food & Drugs Administration,
Panaji - Goa.

..... Respondents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 17/08/2007.

Appellant in person.

Adv. G. D. Kirtani represented both the Respondents.

ORDER

This disposes off the second appeal filed by the Appellant on 25/06/2007 under the Right to Information Act, 2005, hereinafter referred to as the RTI Act. The Appellant has, initially, approached the Respondent No. 1 on 21st December, 2006 for providing him information on 7 points including some documents. Information alongwith the documents was provided for 5 points and it was refused for remaining 2 points on the ground that there is no record available regarding the information requested. The Appellant made his first appeal on 1st February, 2007 to the Respondent No. 2 who has dismissed the appeal on 27th March, 2007. Hence, this second appeal.

2. Notices were issued to all the parties and the Appellant represented himself and the Government Adv. G. D. Kirtani appeared on behalf of both the

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Respondents. The Counsel for the Respondents filed the reply on 25th July, 2007, on behalf of the Respondents.

3. Before we proceed further, it is necessary to narrate the points for which the information was denied. They are as follows: -

“5. Is it correct to say that the Head of Department has committed contempt of Court for willfully disobeying the Supreme Court judgement in the case of R. K. Sabarwal v/s. State of Punjab circulated by Social Welfare Department for compliance vide circular No.13/12/2000-SWD/1502 dated 13/3/2002. Kindly give reasons for non compliance of the Judgement.

6. Reasons for wilfully disobeying the opinion/advice furnished by Social Welfare Department vide their letter No. 61-2-2003-BC(28/1445) dated 13/11/2005; the notings at page 72/C dated 17/5/2005 and letter No. 50-262-95-96-HC/Part/2485 dated 2/11/2005.”

The Respondent No. 1 replied as follows: -

“6) As regards to the query placed at Para 5 and 6 of your above said letter, no information as regards to the reasons assigned to the subject matter is available in the office file records and expressing reasons otherwise in such matters is beyond the scope of State Public Information Officer”.

4. The case of the Public Information Officer is that the reasons asked for by the Appellant are not available on file and hence, he is not in a position to furnish them. On the other hand, the Appellant submits that the request is specific requesting information on the action taken by the Department on letter No. 50-262-95-96-HC/PART/2485 dated 2nd November, 2005 of the Directorate of Social Welfare. The letter clearly states “the decision of DPC appears to be not proper as examined vis a vis with the reservation policy of the State Government”. This advice was not acted upon by the Department of Food and Drugs Administration, Panaji. In his reply, the Government Counsel has submitted that not providing reasons is not denial of information within the meaning and purview of the information as provided under the RTI Act. A combined reading of Section 2(f); 2(i) and 2(j) of the RTI Act reveals that a citizen has a right for information of any record or opinion, advice, press releases etc. which are

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available on the record of the Public Authority. The citizen is also authorized to inspect and take notes thereof in addition to obtaining certified copies of them. However, in the case of inaction by the Department there is no such right conferred on the citizen within the meaning of Section 2 read with Section 6 and 7 of the RTI Act to force the Department to redress his grievance. To that extent the Public Information Officer and the first Appellate Authority are right in their replies/order. The grievance of the Appellant that he was not allowed to inspect the records is also not borne out by facts. There is nothing on record that he approached the Department for inspection of the files/records with a proper application annexing the fee of Rs.10/-. The original request for information dated 24/12/2006 does not contain such request. Consequently, the appeal fails and is hereby dismissed.

5. However, before parting with the case, we would like to observe that one of the main aims of the RTI Act is to ensure accountability in the working of every public authority. In pursuance to that objective it is enacted under Section 4(1)(d) of the RTI Act that it is obligatory on the part of the every public authority to provide reasons for its administrative or quasi-judicial action to affected persons. The grievance of the Appellant regarding the non-implementation of the reservation policy of the Government by the public authority, namely, that the Directorate of Food and Drugs Administration even after the advice from the Social Welfare Department, which oversees the implementation of the reservation policy falls squarely under this Section 4(1)(d) of the RTI Act.

6. It is far too easy to say that the Public Authority which does not act or acts against a law or rule is not required to give its reasons because they are not on its "record". If the reasons are not given by the Public Authority for its inaction or wrong action, the citizen's grievance is not redressed and both the aims of the RTI Act, namely, transparency and accountability of Public Authorities remains illusory. It must be remembered that the provisions of Section 4, the suo moto information to be published by the Public Authorities is the very soul of the RTI Act. But, unfortunately, this provision casts the obligation on the Public Authority, and hence is outside the scope of punishment under Section 20 of the RTI Act. Nevertheless, any "affected person" (not every citizen in this case) has a right to approach the Public Authority (not the Public Information Officer) and get the reasons for a wrong action/inaction by that Public Authority. In case, the

Public Authority does not respond in a reasonable time, he is free to approach this Commission which is entrusted with the powers of monitoring and reporting under Section 25 of the RTI Act.

7. With these observations, we dismiss the appeal.

Announced in open court on this 17th day of August, 2007.

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

Sd/-
(G. G. Kampli)
State Information Commissioner, GOA.

/sf.
sf./km.