

## **GOA INFORMATION COMMISSION**

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

Appeal No. 45/2007-08/MMC

Margao Municipal Council,  
Through the Chief Officer,  
Margao - Goa.

..... Appellant.

V/s.

Shri. Santosh M. Raiker,  
C/o S1, Unity Society (New Address),  
Dongrim, Navelim,  
Salcete – Goa.

..... Respondent.

### **CORAM:**

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

(Per A. Venkataratnam)

Dated: 20/11/2007.

Adv. G. Agni for the Appellant and Adv. Mike Mehta for Respondent.

### **ORDER**

The Respondent Shri Santosh M. Raiker approached Public Information Officer of the Appellant on 13/04/2007 requesting information on 6 points. The Appellant has sent a general reply on 15/06/2007 for all the points combined. Not satisfied, the Respondent filed a first appeal before the Director of Municipal Administration (who is not a party before us) seeking a direction to the Appellant to give complete information. The Director of Municipal Administration who is the first Appellate Authority under the Right to Information Act, 2005 (RTI Act for short) passed an order on 25/7/2007 allowing the appeal and directing the Appellant to furnish the information within 7 days from the date of his order. Aggrieved by this order, the present appeal is filed.

2. The Appellant is a public authority and not a citizen. The RTI Act is enacted to provide for setting out practical regime of right to information for citizens to secure access to information under the control of public authorities. A right is conferred on the citizens to seek information and an obligation is cast on a public authority to provide the information except in certain cases as provided in the Act itself either under section 8 or 9 thereof.

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There is a further right given for first appeal to the citizen in case the information is not given or incomplete and false information is given deliberately. The burden of proving that diligent efforts were made by the Public Information Officer is put on the Public Information Officer himself under the second proviso to section 20(1) of the RTI Act. If the citizen is still aggrieved with the order of the first Appellate Authority, he can file a second appeal to the Information Commissions either at Centre or the State level depending on their respective jurisdiction. Various time limits have been prescribed for disposal of the cases by the Public Information Officer and the first Appellate Authority. The second appeal which is made to the Information Commission under section 19(3) of the RTI Act has to be made against the decision given by the first Appellate Authority under sub-section (1) of section 19 of the RTI Act. A time limit of 90 days is given to the citizens for filing the second appeal. The aggrieved party approaching the first Appellate Authority has to be a "person". We have already held in a number of cases that only a natural person has the right to information and hence, the right of appeal.

3. In this case, the Appellant has not filed the first appeal before the Director of Municipal Administration. No doubt, it is aggrieved by the order of first Appellate Authority but there is no provision in the RTI Act for the public authority to come in appeal before the Information Commission against the order of the first Appellate Authority except in cases where the "public authority" itself is a third party. This is not the case here. The information available with the Appellant and which is asked is not third party information. We have, therefore, held in a number of cases that only a citizen can approach the Commission by way of second appeal under section 19(3) of the RTI Act and not the Public Information Officer or even public authority. In this case, the Public Information Officer has directly approached in second appeal. It is the public authority which has come in the second appeal of which the Public Information Officer is the signatory as the Chief Executive Officer of the public authority. That apart, no provision has been shown to us that the public authority can also approach the Commission if it is aggrieved with the decision of the first Appellate Authority.

4. A peculiar problem has been arisen in this case because though the Margao Municipal Council is a public authority in its own right which is an

institution of self Government established/constituted by a law made by the State Legislature and administers its own Municipal funds, the first Appellate Authority is the Director of Municipal Administration who is not an officer of the public authority. This is how the public authority has come in second appeal against the order passed by the first Appellate Authority. Normally, both the Public Information Officer and the first Appellate Authority are the officers of the same public authority.

5. We are, therefore, of the opinion that the Commission has no jurisdiction to entertain the second appeal by public authority. In view of the above, we are not going into the merits of this case as argued by the learned Advocate for Appellant. For the same reason, we are not discussing the cases cited by the learned Advocate for Appellant on merits of the case. In view of the above, the appeal is dismissed as not maintainable.

Pronounced in the open court on this 20<sup>th</sup> day of November, 2007.

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

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

/sf.