

GOA INFORMATION COMMISSION

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

Appeal No. 45/SCIC/2008

Shri. Dhruvanjay V. Harmalkar,
H. No. 207, Madhala Wada,
Shirgao, Taluka Bicholim – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Deputy Director (Public Health),
Directorate of Health Services,
Panaji – Goa.
2. The first Appellate Authority,
The Director,
Directorate of Health Services,
Panaji – Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner

(Per A. Venkataratnam)

Dated: 13/08/2008.

Appellant in person.

Respondent No. 1 in person. Respondent No. 2 is represented by an authorized officer Shri. A. Talaulikar.

ORDER

This matter has come up before us earlier in a second Appeal No.112/2007. The second appeal at that time was dismissed, as the remedy of the first appeal under section 19(1) of the Right to Information Act, 2005 (RTI Act for short) was not exhausted. The Appellant has subsequently gone in a first appeal and the Respondent No. 2, first Appellate Authority in its Appellate order dated 27/02/2008 dismissed the appeal and upheld the letter of the Public Information Officer refusing the information on the ground that the documents requested were not given as they were not available on record. The Respondent No. 1 said in the Appellate Order "I am constrained to believe that the P.I.O. had made sincere effort to supply the information asked by the appellant and nothing was hidden. Therefore the appeal of Shri. Dhruvanjay Harmalkar stands dismissed and orders passed accordingly." Against this impugned order, the present second appeal is filed. Notices were issued. The Appellant represented himself in person and Public Information Officer was also present in person. The

...2/-

Respondent No. 2, first Appellate Authority was represented by one Shri. A. Talaulikar, an officer of the Health Department authorized by the Respondent No. 2 to represent her. In addition, both the Respondents have filed their written statements.

2. The Appellant by his two requests dated 6/11/2007 and 21/11/2007 requested, among other things, documents of qualification certificate and birth certificate of Shri. Rama Y. Gaonkar who was earlier appointed by the Directorate of Health Services as Field Worker on contract basis. The Respondent No. 1, Public Information Officer, has stated to have replied to the Appellant on 11/12/2007. A copy of his reply is not on record. However, a letter No.ADM/DHS/RTIA/2007/3290 dated 11/12/2007 addressed by the Director of Health Services, C. G. Fernandes to the Public Information Officer is on record which is now submitted by the Public Information Officer duly attested. It says that the qualification certificate of Shri. Gaonkar is not available because no qualification was insisted for this post. The advertisement mentioned that the candidates "should be literate". As such no qualification certificate was insisted nor produced by Shri. Gaonkar. He has further stated that at the time of his appointment on contract basis "the date of birth of Shri. Gaonkar as per his application was 12/04/1963. However as he was appointed on contract basis his birth certificate was not obtained for the record of this office". But, by another earlier letter No. DHS/ADM/RTI/2007/3254 dated 7/12/2007 signed by the same C. G. Fernandes, this time as Director of Administration, to the Dy. Director (HIB), Public Information Officer stated that the "birth certificate is registered at V. P. Shirgao. Date of issuance is 01/05/2005". A copy of his birth certificate dated 23/02/2007 is also enclosed showing the date of registration as 01/05/2005 and date of birth is 16/10/1977. This was attested by the Public Information Officer as well as by the Appellant. It is not known how the Appellant came into possession of this certificate as no mention is made either in his second appeal nor the letter of the Public Information Officer addressed to the Appellant is placed on record. I also do not understand how the same officer changed his stand in a matter of 4 days, could deny the existence of the birth certificate (on 11/12/2007) when he himself has sent a copy to the Public Information Officer earlier (on 7/12/2007). As against this, the first appeal has been dismissed on the ground that "whatever documents available were supplied and that the birth certificate of Shri. Gaonkar was not maintained (due to lack of space and the appointment being on contract basis) and also the birth certificate was not obtained for the record of the office. However, the birth date as per

application of the Appellant is furnished to the Appellant". Thus, there is a contradiction in what the Appellant says and what the Public Information Officer and the first Appellate Authority say.

3. It is the case of the Appellant that Directorate of Health Services while advertising for the post of Field Worker has mentioned that the candidate should not be above 35 years and for that reason, all the candidates have submitted their birth certificates. In fact, he has also enclosed one affidavit signed and submitted by the Respondent No. 2 on 28/8/2007 before the Hon'ble High Court of Bombay, Panaji Bench in Writ Petition No. 191/2007 wherein the Respondent No. 2 has said at para 4 and 5 that the Field Worker appointed pursuant to the advertisement indicating the date of Birth and qualification is annexed thereto. Again as mentioned above, the birth certificate is already in the possession of the Appellant showing the date of birth of Rama Y. Gaonkar. If this is the case, obviously what is stated by the Public Information Officer as well as upheld by the Respondent No. 2 are incorrect.

4. The Appellant prayed in his appeal to set aside the impugned order dated 22/02/2008 and also to take necessary action against the said authority under the RTI Act. He also requested correct information should be provided to him. I have already found above prime facie that the birth certificate was available with the Department and in fact an attested copy was produced by Appellant himself. So, therefore, there is nothing further (information) to be provided to the Appellant. However, prime facie, as it appears this information was withheld in the first instance by the Public Information Officer and wrongly upheld by the first Appellate Authority, the Public Information Officer is directed to show cause why penalty proceedings should not be started against him for providing misleading and incorrect information to the Appellant. The case to come up for hearing on 27/08/2008 at 11.00 a.m.

Pronounced in the open court, on this 13th day of August, 2008.

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