

GOA INFORMATION COMMISSION

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

Appeal No. 49/2007-08/CCP

Shri Rosendo dos Remedios Furtado
Afonso Residency, D1,
Amaral, Taligao - Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Commissioner,
Corporation of the City of Panaji,
Panaji - Goa.
2. First Appellate Authority,
The Director of Municipal Administration,
Collectorate Building,
Panaji - Goa.

..... Respondents.

Appellant in person.

Adv. Laxmikant Halankar for Respondent No. 1.

Smt. Sneha Morajkar, Additional Director, authorized representative for
Respondent No. 2.

Appeal No. 76/2007-08/CCP

The Public Information Officer,
The Commissioner,
Corporation of the City of Panaji,
Panaji - Goa.

..... Appellant.

V/s.

1. Shri Rosendo dos Remedios Furtado
Afonso Residency, D1,
Amaral, Taligao - Goa.
2. First Appellate Authority,
The Director of Municipal Administration,
Collectorate Building,
Panaji - Goa.

..... Respondents.

Adv. Laxmikant Halankar for Appellant.

Respondent No. 1 in person.

Smt. Sneha Morajkar, Additional Director, authorized representative for
Respondent No. 2.

CORAM:

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

(Per A. Venkataratnam)

Dated: 01/11/2007.

ORDER

We are taking up both the cases together as they relate to the same subject matter and the parties are also the same. In the first case, the Appellant who argued his own matter, challenged the order of the first Appellate Authority as

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well as of the Public Information Officer. His grievance against the Public Information Officer is that the information requested by him on 13/2/2007 was not given to him on the ground that it was not available and his grievance against the first Appellate Authority is that no penalty was imposed on the Public Information Officer for delay of 15 days and also for not complying with the Appellate Authority's order. He has prayed that this Commission should call for the records of the learned Director of Municipal Administration i.e. Respondent No. 2 herein and thereafter, direct the Public Information Officer to furnish the information to him as requested earlier and also to impose a penalty of Rs.20,500/- and further penalty of Rs.250/- per day till the time of final "handing" of the documents.

2. In the second case, it is the Public Information Officer who has come in appeal against the order of the first Appellate Authority. It is his case that a part of the information was given after the Appellate order dated 14/05/2007. The other part of the information is not given because they pertain to a period prior to 20 years from the date of the application and that the Respondent No. 2 i.e. first Appellate Authority has not considered this while passing his "impugned order". He contended that the impugned order of the first Appellate Authority is contrary to the "principles of the Right to Information Act, 2005" (for short the RTI Act). He has finally prayed for setting aside the order dated 14/5/2007 of the Respondent No. 2. As the appeal was filed beyond the limitation period a separate application for condonation of delay is also filed. The ground taken for the delay in submitting the second appeal is that the Public Information Officer was transferred and the post was vacant from 9/8/2007 till 3/9/2007 and that the period of limitation has expired on 15/8/2007 i.e. within the period of vacancy of the Appellant's post of Commissioner of Corporation of City of Panaji. It is interesting to note that both the appeal and the application for the condonation of delay are styled as second appeals by the Public Information Officer though he has come in the first appeal against the order of the first Appellate Authority.

3. Notices were issued in both the cases and in the first case, the Appellant argued his matter. The Respondent No. 1, i.e. Public Information Officer was represented by Adv. Laxmikant Halankar. The Respondent No. 2, i.e. first Appellate Authority, is represented by an authorized representative Smt. Sneha Morajkar, Additional Director of Municipal Administration. In the second case, the Appellant i.e. Public Information Officer was represented by Adv. Shri Laxmikant Halankar, the Respondent No. 1 argued for himself and the

Respondent No. 2 namely the Director of Municipal Administration was represented by Smt. Sneha Morajkar, Additional Director of Municipal Administration.

4. In the first case, replies were filed by both the Respondents. While the Respondent No. 1 has given detailed explanation and arguments in his reply, Respondent No. 2, i.e. Director of Municipal Administration has enclosed his Appellate order. In the second appeal, i.e. Appeal No. 76/2007 there is a reply by the Respondent No. 1 both for the condonation application as well as for the main appeal "without prejudice" whereas there is no statement from the Director of Municipal Administration office.

5. It is interesting to note that the Public Information Officer who is supposed to furnish the information or reject with reasons is nowhere in the picture as far as the initial rejection order of the request is concerned. It is the Office Superintendent, (we are told that he is the Asst. Public Information Officer) who has rejected the request for application. He has not signed as Asst. Public Information Officer. We have held in a number of cases, the duty of Asst. Public Information Officer is to only forward the application to the Public Information Officer, the copies of the appeals to the first Appellate Authority/second Appellate Authority as the case may be and otherwise assist the Public Information Officer as mentioned under section 5(2) of the RTI Act. Therefore, his refusal letter dated 26/3/2007 is bad in law. It is also interesting to note further that though the Asst. Public Information Officer has rejected the information as not available in his office, the plea taken by the Public Information Officer in both the cases before us is that the information need not be given as it is more than 20 years old. We have already clarified this matter in a number of cases. Section 8(3) of the RTI Act reads as follows: - "Section 8(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section"(emphasis added). A bare reading of this provision of law makes it very clear that what was exempted from disclosure in some clauses under section 8(1) of the RTI Act should also be revealed after 20 years. In other words, the veil of secrecy is lifted in certain cases, 20 years after the occurrence of the event. The period and the method of calculation of 20 years is further clarified in

the proviso to sub-section (3) of section 8 thereof. The arguments and the grounds taken by the Public Information Officer for both the cases, therefore, is contrary to what is provided in law. Hence, ground of appeal taken by the Public Information Officer in his Appeal No. 76/2007 that the impugned order dated 14/5/2007 of the Director of Municipal Administration (the first Appellate Authority) is "contrary to the principles of RTI Act" itself is contrary to the provisions of the law as contained in the RTI Act. We have, therefore, no alternative except to set aside the letter dated 26/3/2007 of the Asst. Public Information Officer refusing the information to the Appellant in the first case.

6. Apart from the above arguments, we have already held in another case that the Public Information Officer cannot appeal against the order of the first Appellate Authority. This is clear from the provisions of section 19(3) where only a second appeal against the decisions under sub-section (1) of section 19 can be made to the Information Commission. The order dated 14/05/2007 by the Respondent No. 2 impugned by the Appellant in the second case is passed under section 19(1). As far as the Public Information Officer is concerned, it is not an appellate order as he did not file the first appeal. Hence, his appeal before the Commission cannot be termed as second appeal. That apart, as per the scheme of the RTI Act, the appeals are provided when the information is refused to a citizen. There is no provision to prevent the first Appellate Authority who directed the disclosure of information by the Public Information Officer. In other words, it is in furtherance of the objectives of the transparency/ disclosure, the RTI Act provides for two appeals by the citizen. There is no provision for making either a complaint or appeal under the RTI Act by a Public Information Officer. Hence, there is absolutely no case for the Public Information Officer in the Appeal No. 76/2007. It is to be dismissed and is accordingly dismissed.

7. In the case No. 49/2007, a prayer was made by the Appellant for directing the Public Information Officer to furnish the information requested by the Appellant. We have already set aside the refusal order dated 26/03/2007 of the Asst. Public Information Officer. Though the Asst. Public Information Officer rejected the request for information as it is not available, the Public Information Officer did not take any such plea. His plea that the information older than 20 years cannot be given is rejected as a misinterpretation of law. Hence, we hereby direct the Public Information Officer to furnish the information requested by the Appellant within 10 days from the date of this order. In the circumstances of the case, we are not inclined to grant other prayers of the Appellant for imposition of

penalty on the Public Information Officer. Hence, the appeal No. 49/2007 is partly allowed.

Both the orders are announced in the open court on this 1st day of November, 2007.

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

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

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