

GOA INFORMATION COMMISSION

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

Appeal No. 63/2007-08/Mam.

Shri. Sandesh N. S. Kossambe,
Councilor of Sanguem Municipal Council,
Sanguem - Goa.

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Appellant.

V/s.

1. Public Information Officer,
The Chief Officer,
Sanguem Municipal Council,
Sanguem - Goa.
2. Asstt. Public Information Officer,
The Municipal Engineer - Gr. III,
Sanguem Municipal Council,
Sanguem - Goa.
3. Smt. Agnela D'Souza,
The Chairperson,
Sanguem Municipal Council,
Sanguem - Goa.

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Respondents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 26/12/2007.

Adv. S. Kossambe for the Appellant.

Respondents No. 1 and 2 in person. Adv. V. Desai for Respondent No. 3.

ORDER

This is about a request for information alongwith copies of certain documents (Quotations) made by the Appellant on 30th March, 2007 to the Public Information Officer, Respondent No. 1 herein. The Respondent No. 1 having found that the original request for information alongwith the file relating to the request including 4 quotations has been taken by the Chairperson of Municipal Council of Sanguem, the Respondent No. 3 herein, sent a letter to the Chairperson and also copy to the Directorate of Municipal Administration and this Commission on 12th April, 2007 to return back the letter of the request

...2/-

alongwith the file. Some time on 18th of July, 2007, the file was received back from the Respondent No. 3 and on 19th of July, 2007 a reply was given by the Respondent No. 1 to the Appellant. Meanwhile, within 30 days, of the date of the request, the Public Information Officer has informed the Appellant of the position as to why he is not in a position to give him reply. The reply given by the Public Information Officer, though belatedly, one quotation of M/s. Raj Traders could not be certified by the Public Information Officer because the original quotation was misplaced from the file. However, an unsigned photocopy of the same was given. It appears that he has given the information regarding all other quotations alongwith certified copies thereof. On a first appeal filed by the Appellant on 3rd July, 2007 an order was passed by the first Appellate Authority on 31st of July, 2007 dismissing the appeal as the information was already supplied though delayed and because the powers of punishment under section 20 of the RTI Act do not vest in him. This order is not challenged by the Appellant nor did he make the Director as a party before us. The present second appeal was filed on 30th August, 2007. The Appellant has prayed for the declaration of Respondent No. 3 as a deemed Public Information Officer and to impose a penalty on Respondent No. 3 and also award compensation to the Appellant.

2. Notices were issued and all the three Respondents have filed their say. Briefly, in their replies dated 9th October, 2007, both the Respondents No. 1 and 2 have admitted that the reply was delayed because the file was held by the Chairperson i.e. Respondent No. 3 from 1/3/2007 till 17/7/2007. The Respondent No. 1 also mentioned that he has taken over the charge of the Chief Officer of Sanguem Municipal Council only on 1/10/2007 and that the request was received and the reply was furnished by the earlier Chief Officer. The Respondent No. 3 mentioned in her reply that the present appeal is politically motivated to harass her because the Appellant is from opposition and has moved a no confidence motion against her and that the charge of withholding the file by the then Chief Officer by his letter dated 12th April, 2007, mentioned above, are false and mischievous. There is also a letter by the Municipal retainer, Adv. S. Bhangui stating that the file was handed over to him by the Respondent No. 3 on 3rd May, 2007 and he was not sure as to what legal advice was required and on what point. Therefore, he has not given any legal advice. However, when he received a letter from the then Chief Officer regarding the file he returned it with

a covering letter dated 29th June, 2007 which was not accepted by the Inward Clerk of the Municipal Council. Finally, he wrote to the Respondent No. 3 on 11th July, 2007 to collect the file. We are not aware who has collected the file and by whom. As mentioned earlier, the file was returned by the office of the Respondent No. 3 to the Public Information Officer on 17/07/2007 without one original quotation of M/s. Raj Traders. It has come on record as early as 12th April, 2007 through the letter of the then Chief Officer the file was with the Respondent No. 3 and hence, he was not in position to give the reply to the request of the Appellant in time. This letter was also endorsed to the Respondent No. 3. It has come on record that the file was handed over by Respondent No. 3 to the Municipal Advocate on 3/5/2007. It is, therefore, clear that the file was lying with the Respondent No. 3 from 1/3/2007 to 3/5/2007. There is also one more letter on record saying that when the file is received from the office of the Respondent No. 3, the quotation was found missing. On this point, the Respondent No. 3 has countered that the contents are false and that the Respondents No. 1 and 2 should prove their statement. The Respondent No. 3 also contended that he has nothing to do with the furnishing of the information under the RTI Act.

3. It is true that the Chairperson of the Municipal Council of Sanguem, Respondent No. 3 is not declared either the Public Information Officer or first Appellate Authority under the RTI Act. However, there is sufficient evidence on record to prime facie form an opinion that the file was in her office and which was subsequently given by her to the Municipal Advocate for legal advice on 3/5/2007. There is also specific letter saying so by the then Chief Officer which was not replied to by the Respondent No. 3 promptly denying the existence of the file in her office. We, therefore, hold that the Respondent No. 3 indeed a deemed Public Information Officer under section 5(5) of the RTI Act as the Public Information Officer sought assistance from her to return the file to furnish information to the Appellant. She should, therefore, show cause as to why a penalty of Rs.250/- per day from 1/5/2007 till the information is given on 18/10/2007, should not be imposed on her. We are also not concerned with the defence taken by the Respondent No. 3 about the political motivation of the Appellant seeking the information under the RTI Act. A citizen neither needs to mention the purpose for which he/she seeks the information nor prove his/her

locus standi. The case will come up for hearing on cause on 14/01/2008 at 11.00 a.m. As to the missing document, the Chief Officer is directed to file an FIR with the Police with all the factual information.

Pronounced in the open court on this 26th day of December, 2007.

Sd/-

(A. Venkataratnam)

State Chief Information Commissioner, GOA.

Sd/-

(G. G. Kampli)

State Information Commissioner, GOA.

/sf.