

GOA INFORMATION COMMISSION

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

Appeal No. 72/2007-08/Edu.

Shri. Premanand G. Phadte,
46/E, Arlem - Raia,
Salcete - Goa.

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Appellant.

V/s.

1. Public Information Officer,
The Dy. Director of Education (Acad),
Directorate of Education,
Panaji - Goa.
2. First Appellate Authority,
The Director,
Directorate of Education,
Panaji - 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: 29/11/2007.

Appellant in person.

Shri. Avinash V. Nasnodkar, AEO (Legal), authorized representative for
both Respondents present.

JUDGMENT

The Appellant vide his application dated 23/3/2007 addressed to the Director (Admn.), State Public Information Officer of the Directorate of Education sought certain information. It appears that the said application was transferred to the Dy. Director of Education (Acad.), State Public Information Officer as the reply to the said application has been furnished by the Dy. Director of Education (Acad.).

2. As regards the information sought by the Appellant in respect of the points No. (1) A, B, C, D, E and 2(a), the Respondent No. 1 informed the Appellant to obtain the information from the Headmaster of the concerned school. As regards the information pertaining to the point No. 3(a), the

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Respondent No. 1 informed the Appellant to obtain the information from the Public Information Officer of Dy. Director of Education (South). Regarding the point at 3(b), the Respondent No. 1 informed that no action has been taken. Similarly, no final decision was communicated on the remaining points at 3(b), (c), 4(a) and 5.

3. Aggrieved by the said reply of the Respondent No. 1, the Appellant filed the first appeal before the Respondent No. 2 dated 9/6/2007 which appears to have been received in the office of the Respondent No. 2 on 15/6/2007. As the Appellant did not receive any communication from the Respondent No. 2, the Appellant has filed the present second appeal.

4. The Respondent No. 2 who is the first Appellate Authority in reply has stated that the notice dated 16/7/2007 was issued fixing the hearing of the first appeal on 23/7/2007. On 23/7/2007, Appellant remained absent and therefore, the appeal was dismissed for the default of the appearance of the Appellant and that no application was moved by the Appellant for the restoration of the appeal.

5. In terms of sub-section (6) of section 19 of the Right to Information Act, 2005 (for short the Act), the appeal filed under sub-section (1) and sub-section (2) of section 19, shall be disposed off within 30 days from the date of the receipt of the appeal or within such extended period not exceeding a total of 45 days from the date of filing thereof. In the present case, the appeal is dated 9/6/2007. As can be seen from the Xerox copy of the said appeal memo, the same was received on 15/6/2007 and therefore, the said appeal ought to have been disposed off by the Respondent No. 2 on or before 15/7/2007. Whereas, the Respondent No. 2 issued a notice of the hearing after the expiry period of 30 days on 16/7/2007 fixing the hearing on 23/7/2007. No records are produced before us to show that the Respondent No. 2 extended the period as per the provision of sub-section (6) of section 19 of the Act. Therefore, fixing the hearing on expiry of the period fixed for disposal was not proper on the part of the Respondent No. 2.

6. The Respondent No. 2 has dismissed the appeal for the default of the appearance of the Appellant. However, the Respondent No. 2 has not cited any provisions of the Act or the Rules framed thereunder whereby the first Appellate Authority can dismiss the appeal for the default of the appearance of the Appellant. We also do not find any provision in the Act or the Rules under

which, the appeal can be dismissed for default by the first Appellate Authority or even by this Commission. On the contrary, sub-rule (2) of Rule 7 of the Goa State Information Commission (Appeal Procedure) Rules, 2006 gives discretion to the Appellant or the Complainant either to remain present in person or through duly authorized representative or may opt not to be present. No separate Rules have been framed laying down the procedure to be followed by the first Appellate Authority under the Act. This Commission in a number of cases has held that the principles behind the Goa State Information Commission (Appeal Procedure) Rules, 2006 can be followed by the first Appellate Authority. The Act does not empower the first Appellate Authority to dismiss the appeal for non-appearance of the Appellant. The Respondent No. 2, therefore, has erred in dismissing the appeal filed by the Appellant for default of appearance. Being so, the order dated 23/7/2007 passed by the Respondent No. 2 in first appeal No. 25/2007 deserves to be quashed and set aside.

7. Coming now to the reply given by the Respondent No. 1, the Respondent No. 1 should have transferred that part of the application to the Headmaster/Headmistress of M & N High School under section 6(3) of the Act. Similarly, the point No. 3(a) should have been transferred to the Dy. Director of Education, South Zone, Margao under section 6(3) of the Act instead of asking the Appellant to seek the information from that officer. On perusal of the application dated 23/3/2007 of the Appellant, the Appellant wanted to know under point 2(a) as to whether the oral test conducted by M & N High School to admit students in Std. V during May, 2005 violates the Education Rules and under point 2(b) the Appellant wanted to know whether the Department of Education has ascertained the credibility of the oral test conducted by the said High School. According to our view, the information on these two points must be given by the Respondents and not by the M & N High School as it pertains to the Directorate of Education.

8. Turning now to the replies given on points 3(b), 3(c), 4(a), (b) and 5, the information provided to the Appellant is incomplete. Section 4(1)(d) of the Act casts an obligation on the public authorities to provide reasons for its administrative or quasi-judicial decision to affected persons. Therefore, it is the obligation of every public authority to take decisions and provide the same to the

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affected persons with reasons. Therefore, we direct the Respondent No. 2 to take decisions on the aforesaid points and provide the same to the Appellant who is an affected person within 3 months from the date of this order.

9. The Commission has also observed that the reply dated 23/07/2007 was signed by the Dy. Director of Education as a first Appellate Authority. Therefore, it is not clear whether the Dy. Director of Education is also a first Appellate Authority in addition to the Director of Education. If so, their jurisdiction is required to be specified.

10. In these circumstances, we pass the following order: -

ORDER

1. The order dated 27/7/2007 passed by the Respondent No. 2 in appeal No. 25/2007 is hereby quashed and set aside.

2. The Respondent No. 2 is directed to take a decisions on the points 2 (a), (b), 3 (b), 4 (a), (c), 4 (a), (b) and 5 within 3 months from the date of this order and provide the same to the Appellant alongwith the reasons.

3. The Respondent No. 1 shall transfer the part of the application pertaining to the points (1) A, B, C, D, E to Headmaster/Headmistress of M & N High School within two days from the date of the order.

4. The Respondent No. 1 shall transfer the point 3 (a) to the Dy. Director of Education, South Education Zone, Margao within two days from the date of the order.

Pronounced in the open court on this 29th day of November, 2007.

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

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

/sf.

