

GOA STATE INFORMATION COMMISSION

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

Appeal No. 72/2006/

.Joao J. Caldeira,
La Campala Colony,
Miramar, Goa – 403001.

..... Appellant

V/s.

1. First Appellate Authority,
Principal Chief Engineer,
PWD, Altinho, Panaji - Goa Respondent No. 1
2. The Assistant Public Information Officer,
Dy. Director of Administration,
P.W.D, Panaji – Goa. Respondent No. 2
3. The Public Information Officer,
Superintending Surveyor of works,
PWD, Altinho, Panaji - Goa Respondent No. 3

CORAM:

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

(Per G.G. Kambli)

Dated: 30/03/2007

O R D E R

The Appellant has filed this 2nd appeal against the letter No. 50/1/80/PCE-PWD-ADM (I)/933, dated 10/1/2007 issued by the Respondent No. 2 and as the Respondent No. 1 failed to disposed off the appeal filed by the Appellant within the statutory period laid down in sub section (6) of section 19 of the RTI Act, 2005(herein after referred to as the Act).

2. The facts leading to this 2nd appeal are that the Appellant approached the Respondent No. 3 vide his application dated 16/11/2006 under the Act seeking certain information pertaining to the filling up of 33 vacancies of Jr. Engineer pursuant to the advertisement, notice No. 34/51-/2005/PCE/PWD/ADM (III)/521 dated 17/11/2005 published in the daily newspaper Navhind times dated 23/11/2005.

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3. The Respondent No. 3 transferred the application of the Appellant to the Respondent No. 2 vide letter dt. 20/11/2006 under section 6(3) of the Act with a copy to the Appellant. The Appellant, therefore, sought clarification from the Respondent No. 3 vide his application dt. 14/12/2006 and requested the respondent No. 3 to provide the information latest by 17/12/2006. As the Appellant did not receive the information sought by him within the statutory period of 30 days as provided in sub-section (1) of section 7 of the Act, the Appellant preferred the first appeal dated 20/12/2006 before the Respondent No.1 which was presented on 21/12/2006. The Appellant did not receive any decision from the Respondent No. 1 within stipulated period as laid down in sub-section (6) of sec. 19 of the Act. The Appellant, therefore, filed the present 2nd appeal before this Commission on various grounds, as set out in the appeal memo praying interalia, (i) that the letter dated 10/01/07 of the Respondent No. 2 be quashed and set aside and (ii) that directions be given to the Respondents to supply the information to the Appellant immediately. The Appellant has also prayed that the Respondent No. 1 and 2 be punished under section 20 of the Act by imposing a penalty of Rs. 250/- per day till such time the information is furnished and the Respondent No. 2 be directed to pay an amount of Rs. 10,000/- to the Appellant for causing undue harassment, anxiety in not supplying the information and thereby fully preventing the Appellant from getting the information urgently as the Appellant was one of the applicants for the advertised posts.

4. The notices were issued to all the 3 Respondents. The Respondent No. 2 and 3 filed the reply. The Respondent No. 1 did not file any reply, neither remained present, nor was represented by any authorized officer/person. The Respondent No. 3 in his written reply submitted that as per the Government Memorandum dated 22/12/2006, the Respondent No. 3 became the first Appellate Authority and in that capacity he has already passed an order dated 30th day of January, 2007. The Respondent No. 3 further submitted that the Appellant sought the information vide letter dated 14/12/2006 which was transferred to the Dy. Director Admn. (PWD) who was in possession of the information asked by the Appellant and therefore,

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the Respondent No. 2 becomes the PIO as per section 5 (5) of the Act for the purpose of any contravention of the provision of the Act. In terms of section (m) of section 2 of the Act, SPIO means the SPIO designated under sub section 1 and includes State Assistant PIO designated as such under sub section (2) of section 5. However, with effect from 22/12/2006 the Respondent No. 2 becomes the PIO in terms of Government Memorandum dated 22/12/2006. In para 4 of his reply, the Respondent No. 3 also states that the Respondent No. 2 vide letter dated 10/11/2006 had informed the Appellant that his application was rejected by her. In para 5, the Respondent No.3 states that the Appellant has preferred the first Appeal to the Respondent No. 1 on 20/12/2006 and the Respondent No. 1 ceased to be the first Appellate Authority with effect from 22/12/2006. In para 6, the Respondent No. 3 states that the Respondent No. 1 in the capacity of the Head of the Department marked the said appeal to the Respondent No. 2 with an expectation that she will furnish the information to the Appellant. It is interesting to note that at para 7 of the reply, the Respondent No. 3 states that the Respondent No. 2 sent the said appeal to the Respondent No. 3 on 29/1/2007 after the expiry of 30 days time limit without disclosing the fact that she has already written a letter to the Appellant refusing to give the information. Respondent No. 3 further stated that he issued the order suo moto on 30/1/2007 directing the Respondent No. 2 to provide the information immediately without charging fees. In para 9, the Respondent No. 3 stated that it is Respondent No. 2 in the capacity of the SPIO who has to give the justification for her action.

5. The Respondent No. 2, in her written reply, has submitted that as per the Government Memorandum dated 22/12/2006, she became the PIO and the Respondent No. 1 is no more the first Appellate Authority. She also stated that the first Appellate Authority is the Superintending Surveyor of works who issued the order bearing No. 6/2007 dated 30/1/2007. The Respondent No. 2, stated that the Appellant was directed to collect the copies without charging any fees vide her letter No. 50/1/2006/PCE-PWD-ADM(II)/RTI/ dated 27/2/2007.

6. The Appellant has filed the present appeal on 17/01/2007 and the notices for the hearing were issued by the Commission on 23rd day of January, 2007. On the date of the first hearing on 19/02/2007, the Respondent No. 2 was directed to provide a copy of the written statement to the Appellant on 27/2/2007 and the matter was posted for hearing on 28/2/2007. On 28/2/2007 the Appellant submitted that inspite of the direction and the Appellant having visited the Office of the Respondent No. 2, the Respondent No. 2 did not provide a copy of the written statement. The Respondent No. 2 who was present for the hearing on 28/2/2007 was directed by the Commission to provide the information on 28/2/2007 on all the points on which the information was sought by the Appellant and the matter was posted for next hearing on 5/3/2007. On 5/3/2007, the Appellant made the grievances that the Respondent No. 2 has not provided the information and, therefore, the Appellant was directed to make an application to the Respondent No. 2 giving the details of the information which is still pending as per his request. The respondent No. 2 was directed to file the compliance report on 14/3/2007. On 14/3/2007, the Appellant remained present and submitted that in compliance with the direction of the Commission, the Appellant made an application to the Respondent No. 2 bringing out details of the information which was not provided by the Respondent. The Respondent No. 2 remained absent. The Appellant prayed that inspite of the clear direction of the Commission, the Respondents have deliberately, withheld the disclosure of the information and therefore, penalty be imposed on the PIO and the Appellant be also compensated for harassment caused to him by the Respondents.

7. It is to be noted that the Appellant approached the Respondent No. 3 vide his application dated 16/11/2006 when the Respondent No. 3 was the Public Information Officer. The Respondent No.3 transferred the said application to the Respondent No. 2 under section 6(3) of the Act. While transferring the said application, the Respondent No. 3 has asked the Respondent No. 2 to furnish the information directly to the Appellant after collecting from the Appellant Rs. 10/- towards fees and the cost of photo copies at the rate of Rs. 2/- per page. He further gave the direction to the

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Respondent No. 2 to inform him the action taken in the matter. The Appellant immediately reacted to the letter dated 20/11/2006 of the Respondent No. 3 vide his letter dated 14/12/2006 stating that the application under section 6 (3) is to be transferred to the another Public authority when the subject matter pertains to that authority and requested the Respondent No. 3 to provide the information. The Respondent No. 3 informed the Appellant that the Respondent No. 2 shall be treated as a PIO in terms of the provisions of the section 5(5) of the Act. As regard to the contention of the Appellant that the Respondent No. 2 is not the Public Authority, the Respondent No. 3 did not agree with the Appellant.

8. Sub-section 3 of section 6 of the Act provides that where an application is made to a Public Authority requesting for an information which is held by another Public Authority or such matter of which is more closely connected with the function of another Public Authority, the Public Authority to which such application is made shall transfer the application or such part of it to other Public Authority and inform the Applicant immediately about such transfer. Though the section 6 (3) makes an reference to the Public Authority, the applications are made to the Public Information Officer and not to the Public Authority and therefore, it has to be construed that when an application is made to the Public Information Officer and if the information is held by another PIO, such a transfer of application is permissible under section 6(3) of the Act. In the instant case, the Respondent No. 2 was the Asst. Public Information Officer and within the Public Authority of the PWD. The Respondent No. 2 was not a separate PIO and therefore the transfer of the application by the Respondent No. 3 under Section 6 (3) of the Act itself was wrong and illegal.

9. The Respondent No. 3 ought to have taken the assistance of the Respondent No. 2 under sub-section (5) of Section 5 of the Act. Instead, the Respondent No. 3 transferred the application to the Respondent No. 2 under Section 6 (3) of the Act as if the Respondent No. 2 is a separate PIO of another Public Authority. It is the exclusive statutory responsibility of the Respondent No. 3, being PIO to dispose off the application dated 16/11/06

under section 7 of the Act within the statutory period of 30 days. The Appellant presented the application on 17/11/2006 and therefore the time limit provided to furnish the information expires on 17/12/2006. The Government Memorandum is dated 22/12/2006 whereby the Respondent No. 3 has been appointed as First Appellate Authority and the Respondent No. 2 as PIO. The Respondent No. 3, in his written reply, has made a wrong statement that the Appellant submitted the application dated 14/12/2006 for information when, in fact, the application was dated 16/11/2006 was received in the Office of the Respondent No. 3 on 17/11/2006 as is evident from the letter dated 20/11/2006. The Respondent No. 3 has conveniently not made any reference to the application dated 16/11/2006 of the Appellant and intentionally referred the letter dated 14/12/2006 of the Appellant stating that the Appellant sought the information by the said letter. Infact, the said letter dated 14/12/2006 is for seeking the information from the Respondent No. 3 regarding the Public Authority. By omitting the original application dated 16/11/2006 of the Appellant, the Respondent No. 3 has tried to mislead the Commission, but is unsuccessful.

10. The Respondent No. 3 has also tried to mislead the Commission stating that the Respondent No. 2 rejected the application of the Appellant vide letter dated 10/11/2006. However, the Respondent No. 3 has not produced the copy of the said letter dated 10/11/2006 written by the Respondent No. 2 to the Appellant, nor the Respondent No. 2 has produced any letter dated 10/11/2006. The Respondent no. 2 cannot write any letter on 10/11/2006 when the application of the Appellant seeking information itself was received on 17/11/2006. The Appellant has produced a copy of the letter dated 10/1/2007 issued by the Respondent No. 2 to the Appellant informing the Appellant that his application was rejected as the same does not fulfill the requirement of section 6 of the Act. It is not understood as to what requirements of section 6 were not fulfilled by the Appellant. The said letter of the Respondent No.2 is totally arbitrary, illegal and not at all justifiable. The Respondent No. 2, while rejecting the application of the Appellant ought to have given the reasons for rejection of the application. The

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application seeking information can be rejected only for the reasons specified in section 8 and 9 of the Act in terms of sub section (1) of section 7 of the Act. Further, the Respondent No. 2, while rejecting the application has not complied with the mandatory provision of sub section (8) of section 7 of the Act where under, the PIO has to specify the period within which the first appeal is to be preferred and the particulars of the Appellate Authority. None of these provisions have been complied with by the Respondent No. 2.

11. Infact, in our view, the Respondent No. 2 has no jurisdiction to decide the said application dated 16/11/2006 of the Appellant as at the relevant time the Respondent No. 2 was not the PIO. The so called memorandum dated 22/12/2006 was not given retrospective effect and therefore all the applications filed by persons before 22/12/2006 are to be decided by the concerned PIO and not the PIO who is designated after the memorandum dated 22/12/2006. The Respondent No. 2 was conferred with the jurisdiction of PIO only on 22/12/2006 and, therefore, the Respondent No. 2 had no jurisdiction to decide the application filed before 22/12/2006. Being so the letter dated 10/01/2007 issued by the Respondent no. 2 was without jurisdiction and nonest. That apart, the application was received on 17/11/2006 and the same ought to have been disposed off on or before 17/12/2006. Since, the Respondent No. 3 did not dispose the application dated 16/11/2006 on or before 17/12/2006, the application of the Appellant shall be deemed to have been refused by the Respondent No. 3, in view of the provisions of sub- section (2) of section 7 of the Act. It is also worth mentioning that the Respondent No. 3 while transferring the application of the Appellant to the Respondent No. 2 vide letter dated 20/11/2006, had directed the Respondent No. 2 to inform him the action taken in the matter.

12. The Appellant had preferred the first appeal before the Respondent No. 1 on 20/12/2006. Therefore, the Respondent No. 2 ought not to have taken any decision on the application of the Appellant as it was for the first Appellate Authority to dispose off the appeal. By assuming the jurisdiction even after filing the appeal, before 22/12/2006 the Respondent No. 2 has not

only misused but abused the Authority by exercising the powers which were not rested in her. The first Appellate Authority referred the matter to the Respondent No. 2. Further, in his “Appellate” order dated 30/01/2007, the Respondent No. 3 made a deliberate false statement that “on 22/12/2006, the appellant approached the Principal Chief Engineer (PCE) addressing him as 1st Appellate Authority”. Actually, the first appeal was made by the appellant on 20/12/2006, which was entered and received in the Office of the Principal Chief Engineer on 21/12/2006, who was the first Appellate Authority on that date.

13. The Respondent No. 3 in his order dated 30th January, 2007 has stated that with effect from 22/12/2006 the Respondent No. 2 became the PIO and since the information was not provided as per section 5(5), the Respondent No. 2 shall be treated as PIO for the contravention of the provisions of the Act. Section 5 (5) of the Act does not empower the Officers whose assistance is sought by the PIO to furnish the information directly to the applicant. It is the responsibility of the PIO to seek the assistance of the Officers in whose possession the information is available and in the event the said officer did not provide the information to the PIO, (not to the citizen) the said officer is to be treated as PIO for the contravention of any of the provision of the Act. The Respondent No. 3 did not seek any assistance from the Respondent No. 2 but transferred the application under section 6 (3) of the Act as if Respondent No. 2 is a separate Public Authority or PIO.

14. The Respondent No. 3 has made a contradictory statement in his order dated 30/1/2007 stating that the Appellant has approached the first Respondent on 22/12/2006 on which date the Respondent No. 1 ceased to be the first Appellate Authority whereas in the written reply in para 5 the Respondent No. 3 has stated that the Appellant preferred the first appeal to the Respondent No. 1 on 20/12/2006 and with effect from 22/12/2006, the Respondent No. 1 ceased to be the first Appellate Authority therefore it is to be noted that the appeal was filed by the Appellant on 20/12/2006, when the Respondent No. 1 was the first Appellate Authority and as the memorandum dated 22/12/2006 appointing the Respondent No. 3 as First Appellate Authority, the first appeal ought to have been disposed off by the

Respondent No. 1 and should not have been referred to the Respondent No. 2 in as much as the Memorandum dated 22/12/2006 has not been given retrospective effect. Being so, any application made or appeal filed before 22/12/2006 are to be disposed off by the respective PIOs or the concerned first Appellate Authority. The Commission has already held this view in a number of cases and in particular that of Public Works Department itself. The Respondent No. 3 states that the Respondent No. 2 has sent the first appeal to him after the expiry of 30 days on 29/1/2007 and the Respondent No. 3 immediately disposed off the said appeal by order dated 30/1/2007. Here also, the Respondent No. 3 has assumed the jurisdiction and power which were not vested in him. As per sub-section (6) of section 19 of the Act the first appeal has to be disposed off within 30 days from the date of the receipt of the appeal or within such further extended period but not exceeding a total of 45 days from the date of the filling thereof for the reasons to be recorded in writing. In the present case, there is no order extending the period of 30 days by the first Appellate Authority and therefore, the 30 days time limit expires on 19/1/2007 (and not 29/1/2007 as mentioned by Respondent No.3). This being the position even if the Respondent No. 1 was the Appellate Authority therefore, the Respondent No. 1 should have disposed off the appeal before 19/1/2007.

15. From the pleading of the Respondent No. 3, it is seen that the Respondent No. 3 is trying to blame the Respondent No. 2 saying that the Respondent No. 2 be treated as the PIO for the contravention of the provisions of the Act. The Act casts sole responsibility on the PIO to provide the Information within the stipulated period. The Respondent No. 3 has failed to prove that the Respondent No. 3 has sought the assistance from the Respondent No. 2 under section 5(5) of the Act and therefore it does not lie in the mouth of the Respondent No. 3 to say that the Respondent No. 2 should be treated as PIO. Even the 30 days time limit was over on 16/12/2006 when the Respondent No. 3 was the PIO. The Respondent No. 3 did not make any efforts to find out as to whether the information has been furnished or not to the Appellant within the stipulated period. The Respondent No. 3 is, therefore, now precluded from saying that the

Respondent No. 2 is the PIO or the Respondent No. 2 is to be treated as deemed PIO under section 5(5) of the Act for the default of the Respondent No. 3

16. From the above facts, it is crystal clear that all the Respondents have made the Appellant to run from pillar to post and he has been harassed in delaying the information, thereby, causing mental torture to the Appellant.

17. Infact, the Commission in its order dt. 28/2/2007 directed the Respondent No. 2 to provide the information on 28/2/2007 itself and submit the compliance report on 5/3/2007. Again on 5/3/2007, the Appellant made the grievances that the Respondent No. 2 did not provide the complete information and therefore, the Commission directed the Appellant to submit the application to the Respondent No. 2 giving details of the information which is not received by him and the matter was posted for compliance on 14/3/2007. On 14/3/2007, the Respondent no. 2 conveniently remain absent. The Appellant submitted that he was not given the complete information and therefore prayed that the penalty be imposed on the PIO and the Appellant be also adequately compensated for harassment caused to him.

18. It is to be seen from the above that the Respondent No. 3 did not follow the proper procedure instead of seeking the information from the Respondent No. 2 where the information was available, the Respondent No. 3 transferred the application under section 6(3) of the Act. The Respondent No. 3 did not bother to ensure that the information sought by the Appellant is furnished to the Appellant within the stipulated statutory period of 30 days. The appeal filed by the Appellant before the first Appellate Authority was also not disposed off by Respondent No. 1 within the statutory period of 30 days and nor advanced any reasons on the behalf of the Respondent No. 1. The only reason that has been given that with effect from 22/12/2006 the Respondent No.3 became the first Appellate Authority and the Respondent No. 1 ceased to be the first Appellate Authority in view of the Government Memorandum dated 22/12/2006. This reason is not acceptable to the Commission as it is not tenable under the law. It was the duty of the

Respondent No. 1 to dispose off the first appeal within the statutory period and it was also obligatory on the part of the Respondent No. 3 to provide the information to the Appellant within the statutory period of 30 days as laid down in section 7(1) of the Act. By not doing so, the Respondent No. 1 as well as the Respondent No. 3 have failed to discharge their statutory duties imposed under the Act. It is no doubt that the Appellant has not only being denied the information but has been harassed to the greatest extent inspite of the Appellant having approached the Respondents on several occasions. We do not see any bonafides on the part of the Respondents. In spite of the clear direction by the Commission, the Appellant has not been provided with complete information and therefore, the Commission is satisfied that this is a fit case where the Appellant has to be compensated. The Commission, therefore, directs the Respondent No. 1 to compensate the Appellant to the extent of Rs. 5000/- within 2 months from the date of receipt of this order.

19. The present appeal is filed on 17/1/2007. The respondent No. 2 transferred the first appeal to the Respondent No. 3 on 29/01/2007 and the Respondent No. 3 passed the order on 30/1/2007. All this has been done only after filling of the 2nd appeal before this Commission. The manner in which the application of the Appellant is dealt with by all the 3 Respondents created a doubt and suspicion that all the Respondents have acted deliberately and malafidely to frustrate the Appellant in getting the information sought by the Appellant.

20. The Commission is also satisfied that this is a fit case to initiate penalty proceeding against the Respondent No. 3 who was the PIO at the relevant time malafidely withholding the disclosure of the information to the Appellant and made the Appellant to suffer a lot of inconvenience and hardships thereby causing harassment and mental torture to the Appellant. We, therefore direct the Respondent No. 3 to show cause as to why the penalty of Rs. 250/- per day should not be imposed for each day delay till

the information is provided to the Appellant. The Respondent No. 2 has also not provided the information inspite of the directions from the Commission. The Respondent No. 2 also assumed the jurisdiction which was not vested and equally responsible for causing delay and withholding the disclosure of the information sought by the Appellant. The conduct of the Respondent No. 2 also does not appear to be bonafide as Respondent No, 2 did not comply with the directions and failed to file the compliance report. We, therefore, also direct the Respondent No. 2 to show cause as to why the penalty should not be imposed on her also. The reply to the show cause should be filed by the Respondent No. 3 and 2 on 19/04/2007 at 11.00 a. m. We also direct the Respondent No: 2 to provide remaining information to the Appellant by 09/04/2007. Appeal is partly allowed.

sd/-

(G.G. Kambli)
State Information Commissioner

sd/-

(A. Venkataratnam)
State Chief Information Commissioner