

GOA INFORMATION COMMISSION

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

Appeal No. 79/2007-08/Mam.

Shri. John Eric Gomes,
70, Defence Colony,
Alo de Porvorim,
Bardez - Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Mamlatdar, Bardez Taluka,
Office of the Mamlatdar,
Bardez, Mapusa - Goa.
2. First Appellate Authority,
The Deputy Collector & SDO,
Office of the Deputy Collector & SDO,
Bardez, Mapusa - Goa.

..... Respondents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 06/12/2007.

Appellant in person.

Respondent No. 1 in person.

Shri. B. R. Haldankar, UDC authorized representative for Respondent
No.2.

ORDER

The Appellant requested the Public Information Officer, Respondent No. 2 herein on 24th May, 2007 under section 6 of Right to Information Act, 2005 (RTI Act for short) for providing information to him on two points. The first is regarding the action taken on his earlier complaint dated 13th March, 2005 which was handed over by him to the Presiding Officer of a Polling Station in 9 - Aldona Assembly Constituency at the time of polling regarding the violation of secrecy of voting by the then Presiding Officer. The Mamlatdar has informed him that he does not have this complaint before him and has never reached his office. The next point is about not finding his name in the Electoral Roll as a result of

...2/-

which he could not vote at the latest Panchayat as well as Assembly Elections, 2007. The Public Information Officer has replied to him on two occasions firstly on 25th July and next on 29th of August, 2007. The Public Information Officer submitted that the first request by the Appellant dated 24th of May, 2007 was not accompanied by the application fee of Rs.10/- and hence, remained "unprocessed". We find that the reason given by the Public Information Officer for not initiating action if the application fee of Rs.10/- is not paid is not correct. We have already held in a number of cases that the non-payment of application fee of Rs.10/- is a remediable defect and can be collected by the Public Information Officer at the time of furnishing the information alongwith the cost of the information. The Appellant, thereafter, approached the first Appellate Authority, Respondent No. 2 herein by his first appeal dated 30th August, 2007. The first appeal is not disposed off within the time allowed under the RTI Act nor the extended time of 45 days. The Respondent No. 2 has filed a statement that he has fixed up hearing on two occasions and on both occasions it was postponed either Appellant was not present or the Public Information Officer was not present. We would like to make an observation here as we did in number of other cases, that the first Appellate Authority has to pass his speaking order based on the records before him even if the parties do not appear in person or through duly authorized agents. It is not up to him to dismiss the appeal for default of appearance of the Appellant or keep quiet till the expiry of time specified in the RTI Act. We hope, therefore, that the Dy. Collector will take into consideration the observation of this Commission in future and pass his detailed speaking orders on merits in time irrespective of the adjournment applications requested by the parties. Meanwhile, the Appellant filed his second appeal on 8th October, 2007 praying for point by point reply to him by his letter earlier and cost exemplary damages.

2. Notices were issued and the Appellant and the Respondent No. 1 argued themselves besides filing written statements. The Respondent No. 2 has deputed Shri. B. R. Haldankar, UDC who has filed the written statement of Respondent No. 2.

3. The first point is regarding a complaint about the secrecy of voting in March, 2005. The Mamlatdar stated that he has not received the complaint. The elections records are not the records of the Mamlatdar in the true sense and are

the records of the Election Commission and are disposed off in the manner prescribed by them after the conclusion of an election. The next point is regarding omission of the name of the Appellant from the Electoral Roll and subsequent unsuccessful attempt to register his name by applying in Form 6. The Mamlatdar has replied pointwise for the questions raised and has informed him clearly that his request in Form 6 was rejected by the AERO under the election law and has become final because it was not appealed by the Appellant. This is a quasi-judicial function of the AERO and as long as information was given to the Appellant about the status of this case, we are not in position to go into the details of the merits of the rejection order by the AERO. Finally, to the query regarding the deletion of the name of the Appellant in the existing Electoral Roll, the Mamlatdar has already clarified that the enumerator who was sent to his house has found the gate locked of the house of the Appellant and hence, he has deleted the name. A statement was also recorded by the Mamlatdar of the concerned official. The Appellant seeks to dispute the visit by the enumerator saying that he was always present in his own house and the enumerator never came to his house. Deciding who is right and who is wrong in this case of the visit by the enumerator is outside the scope of the RTI Act. We, therefore, find that the information as given by the Mamlatdar is complete on all the points and therefore, we find no merit in the appeal and dismiss it accordingly. We also do not find any merit in the prayer for awarding cost and exemplary damages. Hence, the appeal is dismissed.

Pronounced in the open court on this 6th day of December, 2007.

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

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

/sf.