

BEFORE THE GOA INFORMATION COMMISSION
PANAJI – GOA

Appeal No: 79/2006.

Shri M. K. Madhu
C/o Mrs. M. Monteiro,
H.No. 19/B, Aquem Alto,
Margao – Goa.

....

Appellant.

V/s

1. The Public Information Officer
Town & Country Planning Dept.,
Dempo Tower, Panaji – Goa.

....

Respondent No. 1

2. First Appellate Authority,
Chief Town Planner,
Town & Country Planning Dept.,
Dempo Tower, Panaji – Goa.

....

Respondent No. 2

CORAM:

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

(Per G.G. Kambli)

Dated: 29/5/2007.

Shri F. Fernandes, Adv. for the Appellant.

Both the Respondents in person.

J U D G E M E N T

This is the 2nd appeal filed on 24/1/2007 by the Appellant against the Respondents under section 19 (3) of the Right to information Act 2005 (for short the Act.)

2. In brief, the facts of this case are that the Appellant approached the Respondent No. 1 with a request letter dated 13/10/2006 to provide the certified copies of the following documents, namely:

1. Letter No. 40/8/TCP/96-3639 dated 8/11/1996 along with the file Noting, and
2. Letter No. 40/8/TCP/96-3674 dated 11/11/1996 along with the file Noting.

3. As the Appellant did not receive any communication from the Respondent No. 1 within the specified period as laid down in section 7 of the Act, the Appellant preferred the first appeal under section 19 (1) of the Act before the Respondent No. 2 on 29/11/2006. The Appellant also received a letter dated 29/11/2006 from the Respondent No. 1 informing that the request for information was rejected under section 7 (1) of the Act and under section (8). The reasons given for rejection is of non availability of the information in office records.

4. The Respondent No. 2 fixed the hearing on the first appeal on 21/12/2006. During the hearing the Respondent No. 2 requested the Appellant to furnish certain details about the letters of which the Appellant was seeking certified copies. Accordingly the Appellant provided the details vide letter dated 29/11/2006. The Respondent No. 2 did not communicate any decision on the appeal to the Appellant even after 45 days from the date of filing and therefore the Appellant has filed the 2nd appeal.

5. The notices were issued to both the Respondents and the hearing was fixed on 5/3/2007. On 5/3/2007 both the Respondents were directed to file their written statement/reply on 14/3/2007. On 14/3/2007 the Respondents filed their reply with the copy to the Advocate for the Appellant and the matter was adjourned to 28/3/2007. On 28/3/2007 the Respondents were directed to carry out the search and provide the information to the Appellant. The Respondents were also directed to trace out the minutes of the Town & Country Planning Board and make them available to the Appellant. The learned Adv. for the appellant also filed the reply stating that the certified copies of the noting of the relevant file were not provided to the Appellant. Hence the matter was adjourned to 17/4/2007 for production of documents and also filing the affidavit by the Respondents. So on 17/4/2007, the Respondent No. 1 filed an affidavit. Thereafter the learned Adv. for the Appellant filed written submissions.

6. During the course of the pendency of the 2nd appeal, the Respondent No. 1 vide letter dated 6/3/2007 informed the Appellant that his request for information has been considered under section 3(a) and forwarded certified copies of the documents requested. However, the Appellant stated that only

Xerox copies of the letters were provided but not the certified copies of the letters and the certified copies of the noting were not provided. The Respondent No. 1 filed his affidavit, and in his affidavit the Respondent No. 1 has stated that the file bearing No. 40/8/TCP/96 is not traceable in the Office record and therefore the Respondent No. 1 is unable to provide the certified copies of the noting from the said file to the Appellant under the Act.

7. We have gone through the appeal memo filed by the Appellant, the reply filed by the Respondents as well as perused the affidavit filed by the Respondent No. 1 and also considered the written submissions filed by the learned Adv. for the Appellant. The Appellant sought the information from the Respondent No. 1 vide application dated 13/10/2006. As per section 7 of the Act, the Respondent No. 1 ought to have provided the reply to the Appellant on or before 12/11/2006. However, the Respondent No. 1 did not inform the Appellant his decision within the specified time limit of 30 days and therefore the Appellant have rightly filed the first appeal before the Respondent No. 1 on 29/11/2006. The Respondent No. 1 has communicated the Appellant vide letter dated 29/11/2006 that the request was rejected under section 7 (1) of the Act and intimation is given under section (8). We fail to understand as to exactly which provisions of the Act, the Respondent No. 1 has referred to as section (8) This shows that there is no proper application of mind by the Respondent No. 1. Non-availability of the record is not a ground for rejecting the request of the Appellant. That apart, Respondent No. 1 has not given the reply within the specified time limit of 30 days and therefore the letter dated 29/11/2006 issued by the Respondent No. 1 after the expiry period is a nullity and nonest.

8. Since, the Respondent No. 1 failed to communicate the decision within specified period, the request of the Appellant deemed to have been refused in terms of section 7 (2) of the Act. So, the question of further rejection or refusal of the request by the PIO does not arise at all. The Appellant preferred the Appeal before the Respondent No. 2 on 29/11/2006 and the Respondent No. 2 also failed to take decision within the time limit specified in sub-section (6) of section 19 of the Act. The Respondent No. 2 has also not explained the reasons as to why the Respondent No. 2 could not

disposed off the Appeal within the time limit specified in section 19 of the Act which is not a healthy practice. During the course of the hearing before the Respondent No. 2, the Respondent No. 2 directed the Appellant to provide the certain details regarding the information sought by the Appellant. Thus, the application dated 13/10/2006 of the Appellant was not available with the Respondent No.1 as the said request letter dated 13/10/2006 is very specific and if at all any details or clarification was required the Respondent No. 1 could have sought the same from the Appellant.

9. The Respondent No 1 rejected the request of the Appellant vide reply dated 29/11/2006 on the grounds that the information was not available. However, the Respondent No. 1 provided the copies of the letters to the Appellant vide letter dated 6/3/2007 which means that the Respondent No. 1 did not make any efforts to trace the record earlier and hence had given wrong information to the Appellant stating that the information was not in the record. It is very interesting to note that the letter dated 6/3/2007 written by the Respondent No. 1 to the Appellant, interalia, reads as follows:-
“ Please find enclosed certified copies of the documents requested”. The above reply creates an impression that the information sought by the Appellant was provided by the Respondent No. 1 which is not the correct position. The Respondent No. 1 did not send the certified copies of all the documents requested by the Appellant but only copies of the 2 letters. The averments made by the Appellant in his reply dated 23/2/2007 have not been rebutted by the Respondent No. 1. The said reply of the Respondent No. 1 dated 6/3/2007 was also misleading. Even the part of the information was provided after a delay of 113 days.

10. The learned Adv. for the Appellant in his written submission has submitted that the Respondents ought to have catalogued and indexed all the records as per section 4 (1) (a) of the Act and therefore the relevant file must figure in the index. He also submitted that no reasons are given by the Respondents for not cataloguing and indexing the records. And therefore the Respondent No. 1 cannot be believed that the records are not traceable. The Appellant submitted that the records do exist and available in the Office

of the Respondents and they have been deliberately and malafidely withheld their disclosure.

11. The learned Adv. for the Appellant also submitted that the Respondent No. 1 in his affidavit has stated that the copies of the letter were traced from the Guard file and therefore it was within his knowledge, power and information that such documents did exist in the guard file and yet the Respondent No. 1 informed the Appellant that the records were not available which shows the active role of the Respondent No. 1 in suppressing the information sought by the Appellant. In the written submission it is also submitted that the information sought by the Appellant is from a very important file, which needs to be maintained and constantly referred to by the Development Authorities since it is pertaining to the draft ODP of Margao city. The Appellant has alleged that the Respondent No. 1 deliberately withheld the disclosure and submitted that it is hard to believe that such important file has gone missing. It is also submitted that Respondents have not given cogent and convincing reasons and evidence to show that the file is infact missing and therefore the Appellant has prayed that the penalty of Rs. 250/- per day delay be imposed on Respondent No. 1 under section 20 of the Act and also disciplinary action be recommended against the concerned Officers under section 20 (2) of the Act.

11. It is admitted fact that the Appellant sought the information on 13/10/2006 and the Respondent No. 1 sent the intimation on 29/11/2006 rejecting the request on the grounds that the information was not in the office record. Subsequently, vide letter dated 6/3/2007, the Respondent No. 1 provided copies of the 2 letters to the Appellant even though the letter dated 6/3/2007 says that the certified copies of the documents requested by the Appellant were sent. Thus, as rightly pointed out by learned Adv. for the Appellant that only copies of 2 letters were subsequently made available on 6/3/2007. Even the reply dated 6/3/2007 given by the Respondent No. 1 to the Appellant was misleading. If the Respondent No. 1 could trace the letters from the guard file, the same could have been done earlier before sending the reply dated 29/11/2006. Therefore, the conduct of the Respondent No. 1 shows that there is a deliberate and malafide intention on

the part of the Respondent No. 1 to withhold the disclosure of the information sought by the Appellant.

12. The Commission in its order dated 28/3/2007 has directed the Respondents to trace the copies of the minutes of Town and County Planning Board and make them available to the Appellant, which was also not done, nor any justification has been given. The Appellant is seeking the information pertaining the draft ODP of Margao city which requires to be constantly referred to by the Respondents and therefore it is difficult to believe the version of the Respondent No. 1 that such a important file is not traceable. We strongly feel that such an important file has been malafidely misplaced or destroyed. The affidavit filed by the Respondent No. 1 does not give the details of the officials who carried out the search of the records, no names and designations of the officials are given in the affidavit who have actually carried out the search of the records.

In view of the above, we pass the following order:-

ORDER

We hereby, direct the Respondent No. 1 to give the certified copies of the letters and also make an attempt to carry out the search of the file and provide the information to the Appellant as sought by him.

We are also of the view that this is a fit case for initiating the penalty proceeding under section 20 (1) and recommending disciplinary action under section 20 (2) of the Act and, therefore, hereby give notices to the Respondent No. 1 to show cause as to why the penalty of Rs. 250/- per day delay should not be imposed and also as to why the disciplinary proceeding should not be recommended against him as required by section 20 (2) of the Act. Next hearing is fixed on 18/6/2007 at 11.00 a.m.

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

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

