

BEFORE THE STATE INFORMATION COMMISSION
PANAJI – GOA

Appeal No: 88/2007.

Roy C. D'Souza,
Son of late Pedro C. D'Souza,
Major, married, lecturer in Architecture (senior Scale)
Goa College of Architecture,
Altinho, Panaji –Goa. 403001. Appellant

V/s

1. A.K. Rege,
Public Information Officer/Assistant Professor,
Goa College of Architecture.
Altinho, Panaji – Goa. 403001. Respondent No.1
2. Director of Technical Education,
First Appellate Authority,
Directorate of Technical Education,
Porvorim – Goa. Respondent No.2

CORAM:

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

(Per G.G. Kambli)

Dated: 25/4/2007.

Appellant in present.

Adv. I. Aga for the Respondent No. 1 present.

Respondent No. 2 absent.

J U D G M E N T

This 2nd appeal purported to have been filed under Sub section (3) of section 19 of the Right to Information Act 2005 (for short the Act) is directed against the order dated 23/1/2007 passed by the Respondent No. 2 in appeal No. 2/DTE/2007/2621, on the grounds as set out in the memo of appeal.

2. The facts of the case, in brief, are that the Appellant vide application dated 6/11/2006 sought the certified copies of the certain documents as mentioned therein. The Respondent No. 1 has sent a reply dated 5/11/2006 which was subsequently corrected as 5/12/2006 and also requested

...2/-

the Appellant to pay the processing fees of Rs 10/- and Rs. 2/- per folio/page. The Respondent No. 1 has also informed that the total number of pages would be in 7 numbers. The Appellant has reacted to the said letter vide his reply dated 12/12/2006 stating that the copies which were said to be enclosed alongwith the letter dated 5/12/2006 were not found enclosed. The Appellant also informed the Respondent No. 1 that he received the reply on 7/12/2006 on expiry of 30 days and that he is entitled to the information free of charge. The Respondent No. 1 again vide letter dated 22/12/2006 informed the Appellant that since the Appellant has given the Office address for correspondence the letter dated 5/12/2006 was sent through the Office staff to be delivered to the Appellant in the office but the Appellant refused to take the said letter and therefore, the respondent No. 1 has posted the said letter on the residential address of the Appellant. The Respondent No. 1 also clarified that the copies of the documents were not forwarded alongwith the said letter dated 5/12/2006 because of the non-payment of fees and therefore the letter was sent by registered AD in the afternoon of 5/12/2006. The Respondent No. 1 again requested the Appellant to pay the fees of Rs. 14/- being the fees of the documents and collect the information.

3. Feeling aggrieved by this letter of the Respondent No. 1 the Appellant filed the First Appeal before the Respondent No. 2. The Respondent No. 2 disposed off the said appeal by order dated 23/1/2007 directing the Respondent No. 1 to supply the information free of charge before 12 noon of 24/1/2007 failing which the Respondent No. 1 shall be liable to the penalty as per the Rules of the Act. The Respondent No.2 also sought the compliance report from the Respondent No. 1 latest by 29/1/2007. It is pertinent to note that the Respondent No. 1 has not given even one day to the Respondent No. 1 for providing the information to the Appellant as if the information sought by the Appellant pertains to life or liberty of the Appellant.

4. Admittedly, the Appellant sought the information vide application dated 6/11/2006. The Respondent No. 1 in his Affidavit in reply has stated that the Respondent No. 1 wanted to deliver a letter dated 5/12/2006 to the

...3/-

Appellant in the office which the Appellant refused to accept. The Respondent No. 1 in its reply dated 5/12/2006 has clearly indicated the fees to be paid by the Appellant, which he further made it clear in the subsequent letter dated 22/12/2006. Instead of collecting the information on the payment of the fees, the Appellant chose to prefer the first appeal before the first Appellate Authority. The First Appellate Authority had given direction that the Appellant should be provided information free of cost.

5. The first question that arises for our consideration is whether the Appellant is entitled to the information free of cost even if it is provided after the expiry of 30 days period. This Commission has held in number of cases that the Applicants are not entitled to the information free of cost unless the information is sought under sub-section (5) and sub-section (6) of section 7 of the Act. It is not the case of the Appellant that the Appellant sought the information from the Respondent No. 1 under sub section (5) and sub section (6) of section 7 of the Act. Being so, the Respondent No. 2 was wrong in ordering the Respondent No. 1 to supply the information to the Appellant free of costs. Hence the order of the Respondent No. 2 to that extent needs to be quashed and set aside.

6. The present appeal is restricted only to the information on point No. 3 sought by the Appellant vide application dated 5/11/2006. The Appellant has sought certified copies of the documents regarding the action taken on the minutes of the meeting of advisory committee of Goa College of Architecture held on 26/10/2006. The Respondent No. 1 has replied to the Appellant on this point stating that the matter is pending with the Government of Goa. Even in the affidavit in reply the Respondent No. 1 has stated that the Information sought by the Appellant on this point is not available with the Goa college of Architecture and the Appellant could have obtained this information from the concerned department or concerned Ministry. The Respondent No. 1 has also produced the extract of the outward Register which shows that the letter was outwarded on 5/12/2006 that is exactly on the 30 day of the receipt of the application.

7. As stated above, the Appellant was not entitled to the information free

....4/-

of costs and therefore the Appellant ought to have collected the information on payment of the fees, the intimation of which was given to the Appellant under letter dated 5/12/2006. The information pertaining to the point no. 3 sought by the Appellant is said to have been not available with the Goa College of Architecture.

8. During the course of the argument the learned Adv. on the behalf of the Respondent No. 1 submitted that the decision on the minutes of the meeting of the advisory committee of Goa College of Architecture held on 26/10/2006 was to be taken by the Government and not by the College and the matter was pending at the Government level and therefore the Respondent has rightly informed the Appellant that the matter is pending at the Government level. The Appellant cannot insist the information, which is not available with the Public authority. The Appellant has attributed the malafide to the Respondent No. 1. The Appellant has not even made out a prime facie case to show any malafide on the part of the Respondent No. 1 as the Respondent No. 1 kept the information ready on 5/12/2006 i.e. at least 30 day from the date of receipt of the application and sent the intimation to his residential address as the Appellant refused to accept the letter in the office.

9. In these circumstances, we do not find any substance in the appeal filed by the Appellant and accordingly we pass the following order.

O R D E R

The order dated 23/1/2007 passed by the Respondent No. 2 in appeal No. 2/DTE/2007/2621 is hereby modified to the extent that the direction given by the Respondent No. 2 to supply the information free of any charge is quashed and set aside. The prayer of the Appellant for imposing the penalty is rejected. The Appellant is directed to pay fees against the receipt. Appeal is partly allowed.

Sd/-

Shri G. G. Kambli
State Information commissioner

Sd/-

Shri A. Venkataratnam
State Chief Information Commission