

GOA STATE INFORMATION COMMISSION

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

Appeal No. 11 & 16/2006/POLICE

Adv. Pranay Kamat
Casa Immaculda Building,
AF-2, First floor,
Near Progress High School,
Panaji - Goa.

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Appellant.

V/s.

1. Public Information Officer
C/o Director General of Police,
Police Department,
Police Head Quarters,
Panaji - Goa.
2. First Appellate Authority
DIG c/o Director General of Police,
HQ, Panaji.

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Respondents.

CORAM:

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

(Per G. G. Kambli)

Under Section 19 (3) of the RTI Act, 2005 (Central Act 22 of 2005)

Dated : 12/09/2006.

1. Appellant in person.
2. Respondent No. 1 absent.
3. Respondent No. 2 represented by Shri D. S. Benaulikar, S.D.P.O.,
Panaji.

ORDER

By this common order, we will dispose off the above 2 appeals since both the appeals are directed against the common letter No.PHQ/PET-CELL/PAN-77/06/915/2006 dated 06/07/2006 of the Respondent no. 2 and the parties and the issues involved in both the appeals are the same.

2. In both these appeals, the appellant has challenged letter No.PHQ/PET-CELL/PAN-77/06/915/2006 dated 06/07/2006 of the Respondent No. 2 (hereinafter referred to as the impugned letter). The notices were issued to both

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the parties. The Respondent No. 2 has been represented by S.D.P.O., Panaji Shri D. S. Benaulikar. During the hearing held on 22/8/2006, the Respondent prayed for time and last opportunity was given to the Respondent and the matter was adjourned to 8/9/2006. On 8/9/2006, the representative of the Respondent No. 2 presented an application stating that the Department has moved the Government for appointing Government Counsel and so far no Government Counsel has been appointed. He submitted that he has been instructed only to file this application. He could not say anything on the merits of the appeal. The said application presented by the representative of the Respondent No. 2 also does not make any prayer seeking extension of time. That apart, the Respondent was given last opportunity during the last hearing and therefore, Respondent ought have made arrangements for appointment of Government Counsel. The Commission, therefore, proceeded to hear the arguments of the Appellant and as the representative of the Respondent No. 2 has no say in the matter apart from filing the said application, the matter was reserved for order.

3. The facts of the case, in brief, are that the appellant by two separate applications dated 21/4/2006 and dated 01/05/2006 sought certain information from the respondent no. 1 under the Right to Information Act, 2005 (hereinafter referred to as RTI Act). As the appellant did not receive any reply within the statutory period of 30 days, the appellant preferred appeal before the respondent no. 2 against the deemed refusal. The appellant states that the respondent no. 2 by impugned letter directed the appellant to first approach Asst. Public Information Officer (APIO) and if not satisfied with the reply of the APIO then to approach the respective Public Information Officer i.e. Superintendent of Police, Porvorim and thereafter approach the respondent no. 2, without giving any opportunity of being heard.

4. The appellant submits that the action on the part of the respondent no. 2 is illegal, arbitrary and violation of the RTI Act. The respondents denied the information with malafide intention so as to protect the guilty person and there is some ulterior motive for denying the information. The appellant also submits that though application was addressed to the APIO, the APIO ought to have transferred the said application to the concerned PIO under the RTI Act. The complainant, therefore, prayed that the respondent be directed to furnish the

information as requested by the appellant. The appellant has also prayed to impose the penalty on the respondents and compensate the appellant and also prayed for cost.

5. The mere reading of the impugned letter dated 06/07/2006 shows that there is no application of mind by the Respondent No. 2 to the provisions of the RTI Act while giving directions to the appellant to approach the APIO and if not satisfied then approach the PIO. In fact, the APIO has no role to take any decision and or to furnish or reject any information under the RTI Act even if such information is available with the APIO. The role of the APIO is very limited in receiving the applications or appeals and submit the same to the concerned PIO or Appellate Authority, as the case may be in terms of the provisions of sub-section (2) of Section 6 of the RTI Act. The Act does not empower the Appellate Authority to delegate the powers of the PIO to the APIO to decide the application nor the Appellate Authority can delegate the powers of the first Appellate Authority to its subordinate officers. Once the officers are designated as a PIO and first Appellate Authority by the Public Authority, it is these authorities who have to take the decisions and dispose off the matters.

6. The impugned letter of the respondent no. 2 is illegal and totally contrary to the provisions of the RTI Act. We have already held in case Nos. 13 and 8 that the procedure adopted by the Police Department is not in accordance with the provisions of the Act. We have, therefore, no other alternative but to quash and set aside the impugned letter.

7. As regards to the prayers of the appellant for awarding cost, there is no provision in the Act for awarding the cost. However, the Commission is empowered to impose the penalty under Section 20 of the RTI Act and also to compensate the complainant for any loss or other detriment suffered, under clause (b) of sub-section (8) of Section 19 of the RTI Act. The appellant has not specified the amount of loss or other detriment suffered to enable the Commission to direct the Police Department to compensate the appellant. In the absence of any specific amount, we are not in a position to determine the amount of loss suffered by the appellant on account of illegal decision of the respondent no. 2 and the delay caused in furnishing the information. Regarding the prayers of imposing the penalty and compensating the appellant, we have already taken

a lenient view in the cases referred to above and we are also holding the same view in these 2 appeals and hence, the request for imposing penalty on the respondents is not acceded to.

7. In view of what has been discussed above, we hereby allow both the Appeals and quash and set aside the impugned letter No.PHQ/PET-CELL/PAN-77/06/915/2006 dated 06/07/2006 of the respondent no. 2 and direct the respondent no. 1 to furnish the information to the Appellant within a week from the date of the receipt of this order, as sought by the Appellant vide his applications dated 21/4/06 and 1/5/06. The other prayers of the Appellant are rejected.

Parties to be informed.

(G.G. Kambli)
State Information Commissioner, GOA.

(A.Venkataratnam)
State Chief Information Commissioner, GOA.

12/09/2006.