

GOA STATE INFORMATION COMMISSION

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

Appeal 7/2006/Secc.

Under Secretary (Revenue),
Public Information Officer,
Secretariat, Porvorim.

..... Appellant.

V/s.

Shri V. B. Prabhu Verlekar
Panaji.

..... Respondent.

CORAM :

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

(Per A. Venkataratnam)

Learned Adv. Kishore Bhagat for the Appellant & Learned
Adv. N. D. Kamat for the Respondent.

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

Dated : 27/07/2006.

O R D E R

This disposes off the appeal under Section 19 of the RTI Act,
2005 against the order dated 10/4/2006 passed by the Learned Joint
Secretary (GA) allowing the First Appeal filed before him. The brief

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facts of the case are that the Respondent herein has approached the Under Secretary (Revenue), who is the Appellant herein, on 17/11/05 requesting for certain information. Having not been supplied with complete information by the Appellant, he filed an appeal before the First Appellate Authority namely, Joint Secretary (GA) on 13/3/06. The Appellate Authority issued an order allowing the appeal on 10/4/2006 and directing the Appellant to furnish all the information requested within 2 weeks from the date of the order including the notings. Thereafter, a review petition was filed by the Appellant on 18/4/06 before the Joint Secretary (GA) asking for 90 days time limit so that he can approach this Commission by Second Appeal. The First Appellate Authority by his order dated 12/5/06 granted the request to extend the time for compliance by 90 days. Within 90 days from the First Appellate Authority order dated 10/4/06, the present Second Appeal has been filed under Section 19 (3) on 4/6/06.

2. The Learned Advocate N. D. Kamat appearing on behalf of the Respondent objected to the maintainability of the Second Appeal on the ground that the Appellant who is the PIO is not an aggrieved person of the first Appellate order and hence cannot approach the Commission by this Second Appeal. He further stated that the Appellant has suppressed some information before coming to the

Commission and that the matter of requesting for information is pending much before 17th November, 2005. He stated in his written reply as well as during the arguments that his client has to go through a lot of inconvenience by this delay and refusal of furnishing of the complete information requested though ordered by the first Appellate Authority and hence penalty proceedings under Section 20 of the Act should be started against the Appellant.

3. The Commission has heard Learned Advocate Bhagat on behalf of the Appellant first on the matter of maintainability. The Learned Advocate submitted that he is entitled for relief under Section 19 (3) as he is aggrieved by the decision of the First Appellate Authority. The reason for his grievance is that the notings of the Government file requested by the Respondent and allowed by the First Appellate Authority, contained some other details about an enquiry being conducted against a Mamlatdar with which the Respondent is not concerned. He submitted that this becomes third party information and the third party includes the public authority under Section 2 (n) read with Section 11 of the Act. Joining issue, the Learned Advocate N. D. Kamat submitted that the scheme of the Act provides for the disclosure of information by the public authorities to the citizens and that the Appellant is not an aggrieved party in this case. He is of the

opinion that the appeal is not maintainable and reiterated once again that penalty proceedings should be started against Appellant. In support of his view, the Learned Advocate for the Appellant relied upon the decision of the Bombay High Court reported in 1990 (1) G.L.T. (70).

4. We have carefully gone through the documents produced and the arguments advanced from both sides. It is very clear to us from mere reading of Section 19 (3) that the second Appeal lies against a decision under either Section 19 (1) or Section 19 (2). Under 19 (1) the aggrieved person who has been given the right of appealing is clearly the citizen who does not receive a decision from the SPIO (the Appellant in this case) or if such a decision goes against him. Clearly this does not include the SPIO himself (the present Appellant) in its ambit. Further, he is also not covered under Section 19 (2) as a third party. This is so, because the third party as defined under Section 2 (n) and Section 11 should be a person or public authority who furnished in confidence some information to the PIO and which is sought to be not disclosed to a citizen by the PIO. Certainly, the PIO whose order is set aside by the First Appellate Authority cannot be a third party. Again, under Section 11, the third party (including a public authority), should be heard by both the SPIO as well as the First Appellate Authority if the information in its possession is intended to be disclosed by the SPIO. Here the plea of third party is

made for the first time before this forum. Again the third party, even if we treat the Appellant

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as such, himself has the information regarding the notes as requested by the Respondent and has refused to part with the notes as a SPIO. This is not a case where a PIO intends to disclose the information of a public authority but is a case where the PIO wants to withhold the information (in this case certain notings of a Government file). Hence, we are of the firm opinion that the Appellant is not covered under Section 11 of the Act. In the result, the present Appeal must fail and we accordingly dismiss the Appeal being not maintainable.

5. In view of the dismissal of the appeal as not maintainable, the request of the Respondent made in his written statement to impose penalty on the Appellant does not arise. We therefore, are not inclined to take the penalty proceedings as requested by the Respondent. The status quo order passed by this Commission on 10/7/2006 stands vacated.

Pronounced in open Court on this Thursday, 27th July, 2006.

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

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