

GOA STATE INFORMATION COMMISSION

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

Complaint No. 17/2006/MAM-PONDA

Shri Guiri S. Pai Raikar
R/o 21 Galaxy Apartments,
Cine Vishant Road, Aquem,
Margao - Goa.

..... Complainant.

V/s.

Public Information Officer,
Mamlatdar of Ponda Taluka,
Ponda - Goa.

..... Opponent.

CORAM :

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

(Per A. Venkataratnam)

Dated : 19/10/2006.

Complainant in person.

Opponent also in person.

ORDER

The complainant by his request under Section 6 of the Right to Information Act approached the opponent on 10/4/2006 for information on 7 points. These are: -

- i) Total number of Devasthans who have audited the accounts from 1983;
- ii) Total number of Devasthans yet to submit their audited statements;
- iii) Copies of the notices issued by Devasthans for audit who have failed to audit under Act 7 of 1983;
- iv) Copies of audit reports submitted to the Collector of North Goa in respect of individual Devasthans;
- v) Physical verification of Devasthan funds;
- vi) Total number of Devasthans with names who have audited budget estimates;
- vii) Total number of Devasthans who audited actual receipts & payments.

...2/-

2. He has also submitted another request on 15/5/2006 to Shri G. J. Shankwalkar, Administrator of Shri Devkikrishna Ravalnath Sauntha, Marcela. In this request, he wanted to know whether the accounts of particular Devasthan were audited based on: -

1. Estimated budget submitted to Collector of North Goa for approval of Government and
2. Devasthan funds audited based on actual receipts and payments as on 31st March each calendar year.

3. The Mamlatdar of Ponda has informed to the complainant by his letter-cum-order dated 10/5/2006 referring to his application dated 10/4/2006 rejecting the request. The reason for rejection is that according to him Devasthans are not Public Authorities and are not covered by the RTI Act. At the same time, he has also informed that he has referred the matter to the Collector of North Goa for his advice. On the application dated 15/5/2006, the opponent replied by his letter dated 14/6/2006 in more precise manner that the request is rejected because the Devasthans are not Public Authorities.

4. The complainant thereafter moved the Collector, first Appellate Authority by his appeal dated 5/5/2006 which was replied by the Additional Collector by his letter No.31-9-2006/RB/RTI dated 26/05/2006 signed as Public Information Officer enclosing his letter addressed to the Government dated 19/05/2006. His letter to the Government seeks advice/guidance whether Devasthans and Comunidades are covered under RTI Act. As the complainant did not receive any decision within one month of filing of the appeal, he has filed this complaint before this Commission.

5. In the first instance, we would like to mention that there is lot of confusion in matters of the authorities designated under Section 5 (2) of the RTI Act in respect of Devasthan and the Comunidades. There is no direct reference in the notification issued by the Collectorate or the Department of Information as to the above 2 institutions. However, in respect of the office of the Mamlatdars, the PIO's are the Mamlatdars themselves within their respective jurisdiction, the First Appellate Authority (FAA) being Dy. Collector of the respective Sub-Division. Similarly, for the office of the Dy. Collector, Dy. Collector is the PIO and the Additional Collector, the FAA. In respect of the Administrator of Comunidades, the Administrator of the Comunidades is the PIO and the

Additional Collector is the FAA. The Mamlatdar of a taluka is a Ex-officio Administrator of Devasthan in his taluka. This being so, he is Incharge of the Administration matters of all the Devasthans in his taluka for which he has separate staff at least for the taluka of the Ponda. Though the Devasthans are independent bodies having their own bye laws for day to day administration, the Government exercises supervisory control by a legislation called "Regulamento Dos Mazamias", popularly known as the Devasthan Regulations enacted by the then Portuguese Government by legislative Diploma No. 645 dated 30/3/1933 and amended by legislative Diploma 1898 dated 29/5/1959. This is not only continued after liberation of Goa, but provisions were amended from time to time by the successive Government. The latest one being Act 7 of 1983 of Goa Government. Under the Goa Re-organisation Act, 1987, the act is further continued in the newly formed State of Goa. Some of the important provisions are Article 257 of the Regulations which were amended by the Act No. 7 of 1983 making it obligatory for the Devasthans having income more than Rs.5000/- to get the audit of the accounts compulsorily done by a Chartered Accountant approved by the Managing Committee of the Devasthan; submission of the budget estimates for the approval of the Government, through the Mamlatdar and the Collector; payment of the share of their income (called "Derrama") to the Administrator for the maintenance of the Devasthan section of the Mamlatdar office etc. It is clear, therefore, from the above discussion that the Government has got supervisory role in ensuring the smooth functioning of the Devasthans in Goa.

6. Both parties were called for hearing and both of them relied on their written arguments. The opponent in his arguments raising the preliminary objection, submitted that this Commission itself does not have jurisdiction because it cannot entertain hear and decide present appeal, the same being filed beyond the jurisdiction. However, why this is beyond our jurisdiction is not mentioned. As to the rejection, the original request for information, he has argued that the Devasthans are private religious institutions and do not come within the purview of Section 2 (h) (d) (i) & (ii) of the RTI Act. They are not owned or substantially financed by the appropriate Government, the office bearers of the Devasthans are not public officials and are not paid from public funds, their appointment and service conditions are not governed by the State or Central Government. He has also submitted that there is no provision in the

Devasthan regulations for maintaining the records of the Devasthan with the office of the Administrator. However, he admitted that it is for the Administrator (the Mamlatdar i.e. opponent herein) to verify as to whether such records are maintained by the Devasthan and take a decision on the application filed. Finally, he submitted that he is bound to give information only if it is maintained by the office of the Revenue Department.

7. Regarding auditing of accounts, the Article 257 of Devasthan Regulation mandates the Administrative Tribunal for the audit of accounts of the Devasthan. However, the said article has been amended & published in the Official Gazette Series I, No. 22 dated 1/9/1983 stating that "the management of bodies of members (mazanias) of every Devasthan whose annual income exceeds Rs.5000/- shall get annual accounts audited by a qualified Chartered Accountant to be appointed for the purpose by majority of decision of the Managing Committee of the Devasthan: Provided that the accounts already submitted for audit to the Administrative Tribunal shall be called back by the Managing Committee of each Devasthan and the provisions of this article shall apply to such accounts". His submission is that information regarding audit is not maintained by his office, and hence he is unable to issue the information to the complainant. He has, therefore, requested for the dismissal of the complaint.

8. The complainant, on the other hand, insisted that the information has to be provided to him by the opponent as he has the supervisory role over the Administration of all the Devalayas in his jurisdiction as the Administrator.

9. While the opponent has taken a stand and rejected the request for whatever reasons he believed to be correct, the first Appellate Authority did not bring any laurels to the post he has occupied. He has neither rejected nor granted the request but he has simply forwarded it to the Government. Even this was done almost 20 days after the receipt of the appeal. The Commission fails to understand as to how so much time can be taken even to seek a clarification. The Commission would emphasize here that all the authorities designated under the RTI Act namely, the PIO's and FAAs are quasi-judicial authorities. We expect them to take a decision based on the material available before them, one way or the other and not to seek advise/guidance from higher/superior authorities. If this practice is followed, we are afraid that the very purpose of the Act will be

defeated. Whenever any request is rejected, the law requires them to give detailed reasons besides mentioning the address of the FAA and the time of limitation for filing the appeal.

10. Coming back to the request, the first request namely information about all the major Devasthans in Ponda taluka having income more than Rs.5000/- per annum, the complainant wanted to know only the number of the Devasthans who have just followed the statutory provisions of the Devasthan regulations. Some of the important provisions are already mentioned in the earlier paragraphs. Suffice it to say that the law "Regulamento dos mazanias" is a Government legislation, that it has survived the liberation of Goa and continued thereafter while Goa was a Union Territory and further continued even today after Goa has become a full-fledged State, by virtue of the provisions of the Goa Re-organization Act of 1987. The Mamlatdar has the supervisory role, & the budgets are approved by the Government. The opponent himself is not quite sure of his position when he referred the matter for clarification to his superiors, Collector of North Goa. Further, even during the submissions before us, he says that the opponent can approach the Devasthans individually for the information, though he cannot provide it as it is not available with him. Now the question to be seen is whether the information is maintained by the opponent or the individual Devasthan. Even a very cursory reading of the request of the complainant dated 10/4/2006 reveals that the information is in respect of all the Devasthans in his jurisdiction and is therefore, ought to be available in his office. The opponent has already admitted that he has supervisory role over the Devasthans and that budget estimates accompanied by the audited statement of account has to go through his office to the Government for approval. It is, therefore, not correct to insist that the complainant has to approach each and every Devasthan individually to get information. He has to therefore give the information except points (iv) & (v) of the first request dated 10/4/2006. The question whether the Devasthans are Public Authorities (PAs) will be decided by us after affording all the Devasthans an opportunity to attend a public hearing before us. Meanwhile, the opponent Mamlatdar is directed to furnish the information on all points except (iv) & (v) of the first request dated 10/4/2006 of the complainant, as we hold that this information has to be available with Mamlatdar as the supervisory officer of all Devasthans in his jurisdiction. The request about the 2 remaining points will be decided after public hearing.

11. The second request dated 15/5/2006 is about only one institution namely the Devasthan of Shri Devkikrishna Ravalnath Sauntha of Marcela. As the information is specific to this institution only, the complainant has to approach the Institution Management Committee. With this view of the matter, the following order is passed: -

12. The complaint dated 22nd December, 2006 of the complainant is partly allowed. The opponents order dated 10/5/2006 is hereby set aside. The order dated 14/6/2006 is also set aside for a different reason. The opponent is directed to furnish the information on points mentioned in the first request of the application dated 10/4/2006 except points (iv) & (v).

13. Regarding the second request as the basic records are with Shri Devkikrishna Ravalnath Sauntha of Marcela, the complainant has to obtain the information from that Devasthan only.

The parties may be informed.

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

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