

# **GOA STATE INFORMATION COMMISSION**

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

Complaint No. 17-A/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: 19/02/2007.

## **ORDER**

This order is in continuation of order dated 19/10/2006 passed in the above complaint. In that order, two points were not decided namely; (i) whether copies of audited reports submitted to the Collector, North Goa in respect of individual Devasthanams could be given to the Complainant and (ii) whether the Complainant is entitled to receive the reports of physical verification of Devasthanam funds carried out by the authorities. Both these points were left undecided as a larger issue whether the Devasthanams in Goa are "Public Authorities" under Section 2(h) of the Right to Information Act, 2005 (Central Act 22 of 2005), hereinafter referred to as the RTI Act, was left undecided. No doubt, the Commission had views of both Complainant and Opponent on this matter before it while deciding the complaint. However, the Commission decided to hold a public hearing and they invited the views of all the Devasthanams before coming to a conclusion. Accordingly, a public notice was issued in the newspapers inviting the views of all the Devasthanams and the persons interested in the matter on this point. The notices were published in Sunaparant, Gomantak and the Navhind Times newspapers dated 31/10/2006. Time limit upto 15<sup>th</sup> of November, 2006 was given to file their views. Accordingly, 41 applications were received out of which 2 of them are received a few days later. Thereafter, all those who have filed their

views in writing were invited for a personal hearing at the Institute of Menezes Braganza Hall (Art Gallery Hall) on 6/2/2007. The list of the applications received is at Annexure.

2. On the day of public hearing, learned Advocates who were present as well as the interested persons were asked to advance their views on the point in question.

3. Shri M. S. Usgaonkar, the learned Sr. Advocate on behalf of the applicants at Sr. No. 10 to 23 has argued that the Devasthans are not public authorities as contemplated under RTI Act. He raised the preliminary objection stating that the other Devasthans are not the parties before the Commission in the complaint and therefore, the orders passed by this Commission will not be binding on the Devasthans or the other authorities which are not parties to the complaint. Without prejudice, he said only with a view to assist Commission in arriving at a fair decision, he argued the matter on merits.

4. It is true that the complaint is made by Shri Guiri Pai Raikar who had all along maintained that the Devasthans are public authorities, the documents maintained by them are public documents and that the Devasthans are controlled by officers of the Government (the Mamlatdar and Collector) and hence, they are bound to give information to him which was not given, forcing him to approach this Commission for information. During the public hearing, however, he made a volte facie and submitted that the Devasthans are private institutions and that only the Mahajans are entitled to the information. He is, therefore, not consistent in his stand. The Mamlatdar, who is the Opponent in this case, on the other hand has rejected the request of the Complainant earlier and this Commission has already directed him to furnish information to the Complainant on all points except two points of the request of the Complainant dated 10/4/2006. It is not known whether the Opponent/Mamlatdar has complied with the order of the Commission. He chose not to participate in the public hearing nor for that matter no officer from the Government Departments administering the Devasthan Regulation remained present. Though it is a complaint in a specific case, the idea of holding of a public hearing by the Commission is to arrive at a fair decision on the legal questions after hearing the views of all similarly placed Devasthan's managements and others who have a stake in the administration of the Devasthans. The Commission does not see any illegality or irregularity or impropriety in holding such a public hearing as the decision of the Commission has far reaching consequences on all the

Devasthans. Further, the cases decided by the Commission under the RTI Act, though final, are not judgments settling the rights between two opposing parties nor settling the disputes between them. The appeals and complaints are heard and decided by the Commission from the citizens against the public authorities. They are in the nature of facilitating the citizens to access information from the records maintained by the public authorities. We, therefore, see no harm in holding the public hearing in this case. Accordingly, we overrule the preliminary objection raised by the Sr. Counsel, Shri M. S. Usgaonkar.

5. The learned Adv. Usgaonkar has contented on merits that the Devasthans are not public authorities mainly on the following grounds: -

- i) The Devasthans are not local authorities;
- ii) They are not established or constituted by or under constitution of India or by any other law made by Parliament or State Legislature;
- iii) They are not bodies, controlled or substantially financed directly or indirectly by funds provided by the State Government.

In support of his arguments, he has relied on the following case law: -

- i) Sixth Income Tax Officer Vs. Comunidade of Mapusa decided by Income Tax Appellate Tribunal, Pune by its order dated 3/9/1985.
- ii) Order dated 16/3/1999 of the High Court of Judicature, Bombay in Income Tax Reference No. 317 of 1987.
- iii) R. D. Shetye Vs. International Airport Authority of India and others reported in AIR 1979 Supreme Court 1628;
- iv) Union of India Vs. R. C. Jain and others reported in (1981) 2 Supreme Court cases 308;
- v) Commissioner of Income Tax, Lucknow Vs. U.P. Forest Corporation reported in (1998) 3 Supreme Court cases 530.

6. Shri M. S. Usgaonkar, the learned Sr. Advocate cited the case of Comunidade of Mapusa to say that the Comunidade is not a local authority. By analogy, he submitted that the Devasthans are also not local authorities. He took us through the judgment of R. C. Jain and others cited Supra where the meaning of local authority has been extensively defined. Particularly, he is of the view that the Section 3(31) of General Clauses Act which defines local authority as a Municipal Committee, District Board, Body of Port Commissioner or other authority entrusted by the Government with

the control and management of Municipal or local funds should be looked into. It is the contention of the learned Advocate that the Devasthanans do not control or manage the Municipal or local funds, they are not Governmental agencies and are not directly or indirectly elected by the inhabitants of the area. They are not entrusted by any law such Governmental functions and duties like the Municipal bodies. Similarly, he took us through the International Airport Authority of India case to state that the Devasthanans are not controlled or established by the State Government. According to him, the Devasthanans are existing bodies prior to enactment of Devasthan Regulation and cannot, therefore, be said to have been established under a State law. The law has a “supervisory” role over the functioning of the Devasthanans but this does not amount to any “control” by the Government. In support of his arguments he has taken us through Article 1, 2, 17 of the Devasthan Regulation which state that the members of the Devasthanans are the association of the components of the Hindu temple constituted according to the rites of their religion for the exercise of cult. Though the bye laws are approved by the Government, accounts are audited by the Chartered Accountant and budgets are approved by the Government, this only amount to the supervision over the Devasthanans and not control by the Government. His whole thrust of the argument is on Section 2(h)(d)(i) of the RTI Act to say that the Devasthanans are not owned by the Government nor controlled by them nor substantially financed by the Government. Indeed they are not at all financed by the Government. The law namely, the Devasthan Regulation, governs the Devasthanans, for their effective performance and in any case the Devasthanans are not established or constituted under this Law. The Devasthanans are like the societies registered under Societies Registration Act and/or the Companies incorporated under Company’s Law. They cannot be said to have been established or constituted under the respective laws though the Government authorities have a supervisory role on them.

7. Shri Amrut Kansar, the learned Advocate appeared on behalf of Anil Raikar at Sr. No. 38 contented that the Devasthan Regulation is a law under Article 13 of the constitution of India. He made a distinction between the body of the Mahajans and the temple and submitted that the body of Mahajans are constituted, managed and regulated under the Devasthan Regulation and therefore, the body of Mahajans fall within the purview of Section 2(h)(c) of the RTI Act. He also drew our attention to Article 428 of the Devasthan Regulation and submitted that the bodies of Mahajans which do not have their bye laws approved, should get the same approved within 90 days under the Devasthan Regulation and the Devasthanans are, therefore,

public authorities within the meaning of Section 2 (h) (c). The supervision exercised by the various Government authorities is the “control” as mentioned in Section 2 (h) (d) (i) of the RTI Act. A hierarchy of Government authorities sits in judgment over various activities of the Devasthans Managing Committees. The Mamlatdar is the Administrator of all the Devasthans, in his jurisdiction. He has the powers of appointment and dismissal of the employees of the Devasthans and the Government has not only powers of approving the budgets and accounts of the Devasthans but also to supercede the management in case of any contravention by them of the Devasthan Regulation. He is of the opinion, that this is an absolute control of the Government over the Devasthans.

8. Adv. V. R. Tamba has mentioned on behalf of Devki Krishna Ravalnath of Marcela that the Devasthan Regulation is self-contained code and the procedure for obtaining the information from the Managing Committee of Devasthans is laid down in the Devasthans Act itself. Therefore, the RTI Act is not applicable to the Devasthans. The information has to be given only to the Mahajans of the Devasthans and other citizens have no role to play in the affairs of the Devasthans and no right to seek information. When pointed out that Section 22 of the RTI Act overrides the provision of any law which is contrary to the provision of the RTI Act, he said that RTI Act is a General Law and it does not apply if there are provisions to the contrary in a Special Law like the Devasthan Regulation. He also stated that the orders of the Mamlatdar in Devasthan matters are like arbitration proceedings and do not amount to “control” by him.

9. We have also heard the views of the interested persons who were present for the public hearing. We have also gone through the written representations and written submissions filed by interested parties. The following points arise for our consideration and decision.

- i) Is the body of Mazanias public authority within the meaning of Section 2(h) of the RTI Act;
- ii) Whether the body of Mazanias is controlled by the Government;
- iii) Whether the provisions of the Devasthan Regulation regarding the furnishing of information to its own members/Mahajans is overridden under Section 22 of the RTI Act?;

10. While answering the first question we have to consider the arguments put forth by the learned Sr. Adv. Usgaonkar and countered by the learned Adv. Amrut Kansar. As already mentioned by us, we have overruled the

preliminary objection raised by the learned Sr. Adv. Usgaonkar. Even a plain reading of Section 3(31) of the General Clauses Act makes it very clear that the Devasthanans cannot be put on par with local authorities. We are led to follow the decision of the Supreme Court regarding the criteria to classify the local authority. The Devasthan's funds cannot be equated as local funds. They do not collect any taxes or fees from the people, the Managing Committee are not elected by all the people of the village, and they are not entrusted with any functions of the Local Self Government like the construction, maintenance of roads, local water supply, primary education of children, or collection of taxes etc. We have, therefore, no difficulty in finding that they are not institutions of local self Government. They are governed by the Devasthan Regulation enacted by the Portuguese Government prior to Liberation of Goa "Regulamento das Mazanias" approved by the Diploma Legislation No.645 dated 30/3/1933 and amended by the Diploma Legislation No. 1898 dated 29/5/1958. This Legislation is continued by the then Union Territory Government of Goa Daman and Diu. It is further continued by the State Government of Goa after attaining the full Statehood. Some of the provisions are amended by the State Legislature. Therefore, there is no doubt that the State Government has supervisory control over the Devasthanans in Goa. What is to be decided now is whether these institutions are established or constituted under the State law within the meaning of Section 2(h)(c) and whether these institutions are bodies owned, controlled or substantially financed by the State Government under Section 2(h)(d)(i) of the RTI Act.

11. Before we decide on the issues framed above it is necessary to analyze Section 2(h) of the RTI Act, which defines the "public authority". The definition has two parts explaining (i) its meaning and (ii) other institutions mentioned in the inclusive definition. The first part which defines the meaning of public authority covers four types of institutions as public authorities. These are the institutions which are established or constituted (i) by or under the constitution; (ii) by any other law made by Parliament; (iii) by any other law made by State Legislature; and (iv) by notification or order issued by the appropriate Government. These four are four different categories of institutions which stand on their own legs to be covered under the mischief of the definition of public authorities. The parties present before us during the public hearing were unanimous that the Devasthanans are not institutions established or constituted under the first two categories. The learned Sr. Adv. Shri M. S. Usgaonkar is of the view that they are not institutions covered by any of the categories mentioned in the definition.

However, Adv. Amrut Kansar is of the view that they are the institutions covered by the third category namely constituted under the State enactment. There is no doubt that these are self-governing institutions and are regulated by the State Act called Devasthan Regulation as mentioned above. The learned Sr. Adv. Usgaonkar quoted the case law of I.A.A.I. and R. C. Jain cases and the Commuidade matters to state that the Devasthans are not local authorities. However, he has raised an important point namely that the Devasthans are not established or constituted under the Devasthan Regulation though they are governed by that regulation because they are existing prior to the enactment of the legislative Diploma No. 645 dated 30/3/1933. He has compared the institutions to those which are registered under either Societies Registration Act or Companies Act and not those which are established by a specific legislation. Hence, they are not covered under Section 2(h)(c). Countering the arguments, Adv. Amrut Kansar stated that the Devasthans have no freedom at all in any of its secular functions like the administration of property, appointment and disciplinary action against its employees, auction of material received from time to time, preparation of budgets and audit of accounts. He cited a number of articles of the Devasthan Regulation to prove his point like Article 1 and 2, Article 7, Article 14, Article 44 and Article 70. He is of the opinion that the Devasthan's Managing Committee has very little freedom and has to obey the orders of the Administrator who is Mamlatdar of taluka. Though the Devasthans are not dependent for grants or funds given by the Government directly or indirectly there is a total control over the administration. Hence, he is of the opinion that they are covered under the definition of the Section 2 (h) (c) (i) of the RTI Act and hence are public authorities. Joining issue, the learned Sr. Advocate Usgaonkar has countered that the Devasthans, no doubt are bound by the orders of the Administrator (Mamlatdar), Director of Civil Administration (Collector) and the Government. But, this does not amount to "control" by the Government and in any case they are not established and constituted under the Devasthan Regulation and hence are not covered either under Section 2 (h) (c) or 2 (h) (d) (i). Hence, they are not public authorities.

12. We have discussed three categories of institutions, which are public authorities above. There are three more categories of institutions which are covered by same definition which are as follows: - (i) the institutions which are established or constituted by a Government notification; (ii) the bodies which are owned, or controlled, or substantially financed by the Government; (iii) and the non Government organizations which are substantially financed by funds provided by the Government directly or indirectly.

13. There is no notification issued by the Government, and admittedly these institutions do not receive any finance from the Government. Hence, they are not covered by the categories mentioned at para 12 (i) and (iii) Shri M. S. Usgaonkar, the learned Sr. Advocate contented that the Devasthanans are not the local authorities or institutions of local self Government. Besides, the institutions of self Government, there are two more categories namely any authority or body established or constituted by law made by the State Legislature. It is undisputed that the Devasthan Regulation is a law made by the State Legislature. Now, what is to be seen whether the body of Mazanias is established or constituted under the Devasthan Regulation. The Title 1 to the Devasthan Regulation reads as under: -

“Relating to the constitution & management of the bodies of members (mazanias) of Hindu Temples (Devasthanans)”.

Thus, the Title 1 itself suggests that the Devasthan Regulation deals with the constitution and management of the bodies of members (Mazanias). Article 428 of the Devasthan Regulation also contemplates that the bodies of mazanias which are in existence but do not have their approved bye laws should get the bye laws approved within period of 90 days so as to constitute the said body of mazanias under the Devasthan Regulation. As per Para 1 of the said Article 428, a duty is cast on the Mamlatdar to ensure that the compliance of this article and in terms of Para 2 of the said Article 428, those associations of mazanias which fail to comply with the provisions of Article 428 shall be declared dissolved and their properties shall be applied in benefit of public welfare as it is decided by the Governor General. Thus, all the bodies of mazanias are necessary to be constituted and regulated in accordance with the Devasthan Regulation. It is very pertinent to note here that when a body of mazanias is dissolved, the properties are applied in benefit of public welfare and not to be distributed among the mazanias. This itself suggests that the body of mazanias is not a private body. The Devasthan Regulations contain various provisions relating to the constitution and management of the bodies of the mazanias including those of elections and obligations and also the control over the bodies of mazanias. It was contended that bodies of mazanias were existing prior to the Devasthan Regulation and therefore, the plea is taken that they are not established or constituted under the Devasthan Regulation. In this contest, it may be pointed out that there existed Government order No. 584 dated 30<sup>th</sup> October, 1886 governing Hindu temples have prior to the enactment of Devasthan Regulation. Therefore, all the Devasthanans which were existing prior to the



enforcement of the Devasthan Regulation were governed by the said Government order. Being so, we are of the view that the body of mazanias is constituted and governed under the Devasthan Regulation and therefore, it comes within the definition of public authority as defined in Section 2(h)(c) of the RTI Act. We, therefore, answer the first issue framed at para 9 above accordingly that the Devasthans are public authorities within the meaning of Section 2(h)(i)(c) having been constituted and established under the Devasthan Regulations, a law made by State Legislature.

14. There is one more category which needs to be considered under the definition of public authority. This is Section 2 (h) (d) (i) which speaks of any body controlled by the Government and includes it in the definition of a public authority. So the question here is whether the Devasthans are controlled by the Government. In this definition, there are three criteria to be covered to qualify for being a public authority. (i) ownership by the Government; (ii) control by the Government; (iii) substantially financed by the Government. These three criteria are mutually exclusive and have to be read independent of each other. It is admitted that they are not owned or financed by the Government so the only point to be seen is whether that the bodies of mazanias are controlled by the Government and whether the inclusive definition has got any connection with Section 2 (h) (d) i.e. whether the notification of the Government is also necessary in case of institutions mentioned in the inclusive definition. It appears to us that the inclusive definition and the institutions mentioned therein have no connection with the notification or order of Government under Section 2 (h) (d). So all that is to be seen now whether the bodies of mazanias are controlled by the Government under the Devasthan Regulation. We have already gone through a number of articles which give absolute control over the “secular” matters of the bodies of mazanias as argued by the learned Adv. Amrut Kansar. However, learned Sr. Adv. Usgaonkar stated that the word control will mean actually supervision for the effective performance of the duties by the Managing Committee of the Devasthans. He likens to “guardianship” as mentioned in the case of *Communiade of Income Tax Appellate Tribunal*. We have seen that para No. 13 of the order of the Tribunal referred by him mentions the view of the Income Tax Department and not its view on the definition of the “administrative tutelage of the State” in Article 5 of Code of *Communiade* meaning guardianship of the State. The guardian cannot be the owner of the property of the person whose guardian he is. While we agree that the guardian is not the owner of the property of his ward, here as we have already mentioned that the ownership and control of the institutions

are mutually exclusive and both conditions need not be satisfied together to be covered under the definition of the public authority. We have also found that the institutions need not be established or constituted under the State law. We have already found that they are controlled by the Government and this is enough to be covered as public authority. We therefore find that the Devasthanans are public authorities within the definition of Section 2 (h) (d) (i) of the Act. In this contest, the provisions of Article 428 Para 2 is also relevant which states that in the event the body of mazanias is dissolved their properties shall be applied in the benefit of public welfare and therefore, no option is left to the mazanias once they are dissolved and it is the discretion of the Government to utilize their properties for the public welfare. Therefore, the Government has got absolute control over the body of mazanias. And we hold that the body of mazanias constituted under the Devasthan Regulation are controlled by the Government and therefore, they fall within the meaning of Section 2(h)(d)(i) of the RTI Act. We answer the second issue framed at para 9 of above accordingly.

15. Issue No. 3 is about the overriding powers of the RTI Act in matters regarding the furnishing of information by the public authorities under the RTI Act if there are contradictory provisions under any other Act. Section 22 of the RTI Act reads as follows: -

Section 22 - Act to have overriding effect. – “The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act”.

16. As can be seen from the above, even the Official Secrets Act provisions are overridden by the RTI Act in so far as they are inconsistent with the RTI Act. The learned Adv. Tamba called for harmonious interpretation of the provision of the RTI Act and the Devasthan Regulation. We do not find any need for further interpretation or harmonious construction, as the law is very clear. Such effort has to be made if there are contradictory provisions in the same Act. Here this is not the case. Further, the argument of the learned Advocate that the RTI Act is a General Law and the Devasthanans Act is Special Law also has no bearing for the decision on this issue. We, therefore, answer this issue in the positive i.e. the RTI Act overrides the Devasthan Regulation in so far as furnishing information to the citizens.

17. In view of the discussion above, the following orders are passed: -
- i) We hold that the Devasthans are public authorities within the meaning of Section 2 (h) of the RTI Act;
  - ii) We direct the Mamlatdar to give the information in respect of points no. 4 and 5 of the Complainant's request dated 10/4/2006, the decision which was reserved by our earlier order dated 19/10/2006;
  - iii) We direct that the Revenue Department of the Government of Goa which administers Devasthan Regulation to declare the PIO's, APIO's and FAA's in respect of Devasthans within the next one month from the date of this order.

18. The copies of this order shall be also sent to the Collector, North and South and all the Mamlatdars of the State. Before we part with this order we would like to place on record our appreciation and gratitude to the learned Sr. Adv. Shri M. S. Usgaonkar and learned Adv. Shri Amrut Kansar for their valuable assistance to the Commission for arriving at a fair and reasonable decision.

The above order should be communicated to the parties concerned by post.

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

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