

GOA INFORMATION COMMISSION

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

Complaint No. 18/2008

Shri. Shekhar S. Shirgaonker,
H. No. 498/304, Malbhat, Aquem,
Margao – Goa.

... Complainant

V/s.

1. The Public Information Officer,
The Member Secretary,
South Goa Planning & Development Authority,
Osia Complex, Margao – Goa.
2. The first Appellate Authority,
The Chief Town Planner,
Town & Country Planning Department,
Patto, Panaji – Goa.

... Opponents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 11/09/2008.

Complainant in person.

Adv. Vivek Rodrigues for the Opponent No. 1.

ORDER

This complaint has been filed against the Public Information Officer, Opponent No. 1 herein under the Right to Information Act, 2005 (RTI Act for short) for non-implementation of order dated 24/03/2008 of the first Appellate Authority, Opponent No. 2 herein.

2. Notices were issued and the Complainant represented himself in person whereas Adv. Vivek Rodrigues represented the Opponent No. 1. There was no representative on behalf of the Opponent No. 2. The Opponent No. 1 has filed a statement in writing and also his Advocate argued the matter subsequently. It has come out during the course of hearing that the first appeal was initially rejected by the Opponent No. 2 which subsequently was restored and the Opponent No. 1, the Public Information Officer was directed "to give the information in question as

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per the provision of RTI Act and in the form it is sought by the applicant under section 7(9) of the Act". The Public Information Officer was also directed to give the information to the Appellant within 7 days of his order. Subsequently, the copy of the ODP of Margao was given by the Public Information Officer and this is admitted by the Complainant. So the only issue that remains is giving the extract of land use register of two survey numbers requested earlier by the Complainant by his letter dated 11/02/2008 under the RTI Act. It is the case of the Opponent No. 1 that there is no such land use register for the year mentioned by the Complainant and therefore, it was not given. A question, therefore, has arisen whether the non-availability of the record was brought to the notice of the first Appellate Authority at the time of hearing before him or was it raised only during the hearing of this present complaint by this Commission. As this is an important point, i.e. how could the first Appellate Authority direct the Opponent No. 1 to give the information which did not exist, the records and proceedings of the first Appellate Authority were called for.

3. Surprisingly, a bunch of unattested photocopies of the records and proceedings before the first Appellate Authority were submitted before us. To begin with, we would like to mention that when this authority requires the records and proceedings of the first Appellate Authority and the Public Information Officer, they have to be submitted in original and not photocopies. Further, the unattested photocopies have no meaning and cannot be relied upon. Finally, a perusal of all the photocopies submitted by the first Appellate Authority, Opponent No. 2 reveals a fundamental deficiency and a grave error, in so far as the first Appellate Authority was guided by his subordinates for the disposal of first appeal before him. It appears that, the first appeal was disposed off just as a routine administrative file work by submitting it to the first Appellate Authority. It is also revealed that even a draft order was prepared by the office and put up for the mere signature of the first Appellate Authority. This clearly shows the non-application of mind by the first Appellate Authority which is not acceptable to us. Though, a personal hearing is given to the Complainant and the Public Information Officer by the first Appellate Authority, as long as the order is drafted by a subordinate officer of the first Appellate Authority and signed by the first Appellate Authority, it

cannot really be stated that this is the appellate order of the first Appellate Authority. This may be kept in view in future by the first Appellate Authority and prepare a separate case file for each appeal record, write a daily proceeding sheet for all days of hearing and finally pass his own order based on the records before him and the arguments of the parties. The first Appellate Authority is a quasi-judicial authority and has to pass orders using his own discretion and assessment of the facts before him.

4. Coming back to the main issue of the order of the Public Information Officer dated 7/03/2008 rejecting his request for giving extract of land use register on the ground of non-availability, the Complainant submitted that this is not one of the reasons mentioned in sections 8 and 9 of the RTI Act. This argument is devoid of any merit. No doubt, the grounds of rejection of the RTI Act request are contained in sections 8 and 9 of the RTI Act and are in nature of a self-contained code. Nevertheless, the grounds mentioned for rejection by the Public Information Officer in sections 8 and 9 are about the records available with him but cannot be disclosed to the citizens. Naturally, they do not contain a separate ground of rejection of the request where records are not available with the Public Information Officer. In fact, no written ground of a rejection of such type can exist in any law as the Public Information Officer is not supposed to create a record and give it to the citizen. Hence, the complaint is devoid of any merit.

5. Shri. Antonio Diniz, former Public Information Officer has filed affidavit. We do not feel it necessary to discuss the said affidavit as the same is not relevant to decide the points under consideration.

6. With the above view of the matter, the complaint is dismissed.

Announced in the open court on this 11th day of September, 2008.

Sd/-
(A. Venkataratnam)
State Chief Information Commissioner

Sd/-
(G. G. Kambli)
State Information Commissioner

