

## **GOA INFORMATION COMMISSION**

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

Complaint No. 28/2007-08/MMC

Smt. Manikbai N. Tendulkar,  
H. No. 154/A-2, Duler, Ward No. 02,  
Mapusa - Goa.

..... Complainant.

V/s.

The Public Information Officer,  
The Chief Officer,  
Mapusa Municipal Council,  
Mapusa – Goa.

..... Opponent.

### **CORAM :**

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

(Per A. Venkataratnam)

Dated: 06/12/2007.

Mohan Namdev Tendulkar, POA holder for the Complainant.

Adv. Mrs. N. N. Pednekar for the Opponent.

### **ORDER**

The Complainant approached the Opponent by a request dated 18<sup>th</sup> April, 2007, under the Right to Information Act, 2005 (RTI Act for short) for providing certain information on three points. The Opponent has replied to the Complainant pointwise on 15<sup>th</sup> May, 2007. Not satisfied with the reply, the Appellant filed her first appeal on 29<sup>th</sup> May, 2007 asking for complete information which was allowed by the first Appellate Authority, the Director of Municipal Administration (not a party before us) by his order dated 19<sup>th</sup> June, 2007. A copy of the Appellate order produced by the Complainant, which is on file, directed the Opponent, who is the Public Information Officer, to give information as requested within 10 days. The Opponent by his reply dated 6<sup>th</sup> July, 2007 provided the Complainant further information. The present complaint is against the Opponent for not furnishing the complete information within 10 days of the order dated 19<sup>th</sup> June, 2007 of the first Appellate Authority as well as giving wrong information to him earlier on 15<sup>th</sup> May, 2007. He has prayed in the present complaint dated 3<sup>rd</sup> September,

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2007 that legal action under section 20 of the RTI Act should be taken against the Complainant and the Asst. Public Information Officer and also to pay her a compensation of Rs.10,000/- as expenses for the filing of this case.

2. In order to understand the case further, we have to go into a short background of the matter. It appears that on 27<sup>th</sup> July, 1975, the Mapusa Municipal Council issued a certificate of registration of establishment of hair dressing saloon under the name and style of "M/s. Central Hair Dressing Saloon" to Shri. Namdev F. Tendulkar, the late husband of the Complainant. The establishment is in the Municipal property for which ground rent is charged. As per the copy of the certificate of registration in Form III, produced by the Complainant, the establishment was renewed from time to time and is valid upto 31<sup>st</sup> December, 2007 in the name of late Shri. Namdev Tendulkar. It is not on record when Shri. Namdev Tendulkar expired but it is on record that his wife, that is, the Complainant has applied for transfer of establishment in her own name. The Municipal Council has calculated the fees for transfer and also outstanding rental ground rent for the establishment and informed her by their letter dated 11/1/2007. Thereafter, it appears that there is some correspondence initiated by the Complainant requesting the Municipal Council to give a rebate/concession which was rejected by the Municipal Council. This led the Complainant to file the present application under the RTI Act on 18<sup>th</sup> April, 2007. The contradiction in the replies by the Chief Officer to the Complainant is based on two letters, one, the reply given by the Asst. Public Information Officer (APIO) to the original request for information on 15/5/2007 and another, the reply filed by the Opponent before the first Appellate Authority on 6<sup>th</sup> July, 2007. For better appreciation, the relevant portions of both the replies are extracted below: -

3. Question No. 2: - "I want to know ----- total amount due towards renewal of Board Licence and Establishment Licence towards the above said Establishment".

Reply dated 15/5/2007 by the APIO: - "This office has not issued any establishment licence and Board licence in the name of Central Hair Dressing Saloon, hence the question of renewal of establishment licence and Board licence does not arise".

Reply dated 6<sup>th</sup> July, 2007 by the PIO: - “There is a establishment or shop premises having establishment name called M/s. Central Hair Dressing Saloon in the name of Shri. Namdev F. Tendulkar however for these Municipal office has not issued any establishment licence but only issued the Board licence to Shri. Namdev F. Tendulkar in the name N. F. Tendulkar, hence question of renewal of establishment license does not arise”.

4. The statement/reply dated 6<sup>th</sup> July, 2007 by the Opponent was sent to the Complainant, copy to the first Appellate Authority as a compliance of the order dated 19/06/2007 of the first Appellate Authority. It appears that the Complainant is aggrieved that both the establishment and Board licences are issued earlier and now the Opponent has changed his stand on 6/7/2007.

5. In reply filed by the Opponent/Public Information Officer before this Commission on 21/11/2007, the Public Information Officer, stated that the original reply was given by the Asst. Public Information Officer and that the reply dated 6/7/2007 was filed by him before Director of Municipal Administration based on office records and that there is no contradiction. The Opponent explained the delay of the few days because of his other official work. As far as the contradiction, he says that there is no contradiction between the two communications. He has confirmed that there is no establishment licence issued in the name of M/s. Central Hair Dressing Saloon. However, he has not said whether it is necessary under Municipal law to have such an establishment licence. What he has confirmed in the reply before this Commission is that Shri. Namdev F. Tendulkar still figures in the Municipal records as occupier of the open space of the Municipality. In his further written arguments, he has submitted that the Opponent has not violated any provision of the RTI Act and the complaint is without any basis.

6. The RTI Act provides under section 5(2) the designation of an officer at each sub-divisional level as Asst. Public Information Officer (APIO). As the Mapusa Municipal Council does not have different offices within its jurisdiction, there is no necessity to appoint an APIO. Even if some one is appointed as such, he can only receive the applications for information or appeals under this Act for forwarding the same forthwith to the Public Information Officer or the first Appellate Authority or the Information Commission. He has no other role. The Public Information Officer cannot

delegate his responsibility to the APIO to give the information to the citizens under the RTI Act. Hence, we construe the reply by the APIO as the reply by the Public Information Officer himself. We also direct the Public Information Officer to desist from the present practice and deal with the requests for information himself in future.

7. We find that the delay in the complying with the order of the Director of Municipal Administration is negligible and we accept the reply of the Opponent for the said delay. As far as the contradiction is concerned though the Opponent has stated that there is no contradiction between the replies of the Asst. Public Information Officer and the Public Information Officer, it is clear that a doubt is raised in the mind of Complainant regarding the requirement or otherwise of the establishment licence for running by her M/s. Central Hair Dressing Saloon in the Municipal property after the demise of her husband and in whose name the establishment is licensed. This is because the Opponent clearly stated in his reply dated 6/07/2007 that renewal of establishment licence does not arise. We also find that from the documentary evidence furnished to us by the Complainant there is indeed, a registration certificate duly renewed upto 31<sup>st</sup> December, 2007 of M/s. Central Hair Dressing Saloon. We also noted that Complainant wants to continue the business of this Central Hair Dressing Saloon as a successor of the late licence holder and a transfer application is stated to have been made as early as 18/12/2006 which was not yet decided.

8. The only objective of the RTI Act is to promote accountability in the working of every public authority, though the main objective is to promote the transparency. To achieve this objective section 4(1)(d) has been enacted that every public authority should provide reasons for its administrative or quasi-judicial decision to the affected persons. This includes the liability and duty of a public authority to decide every application before it from a citizen promptly and within a reasonable time. This right is given only to the affected persons and not to all citizens. The Commission is empowered to give direction to the public authorities to ensure the compliance of the objective of accountability by the public authorities and in fact it did so on a few occasions. We, therefore, hereby direct the public authority, Mapusa Municipal Council to consider and decide on merits the transfer application

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made by the Complainant within 30 days from the date of this order. We give such a direction under section 4(1)(d) read with section 19(8)(a) of the RTI Act. However, the transfer of the business would be subject to the payment of the necessary fees as per the Municipal byelaws. In these circumstances, we are not inclined to grant the prayers of taking penalty action against the Opponent under section 20 of the RTI Act. The complaint, is therefore, allowed partly with the above direction to the Mapusa Municipal Council.

Announced in the open court on this 6<sup>th</sup> day of December, 2007.

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

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

/sf.