

GOA INFORMATION COMMISSION

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

Complaint No. 87/2007

Shri. J. T. Shetye,
C/o. Mapusa Jana Jagruti Samiti,
H. No. 35, Ward No. 11,
Near Akshay Durga Co-op. Housing Society Ltd.,
Khorlim, 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: 30/07/2008.

Complainant in person.

Adv. D. P. Dabholkar for the Opponent.

ORDER

The Complainant made a request under Right to Information Act, 2005 (RTI Act for short) to the Opponent on 05/03/2008 in respect of certain information regarding unsafe condition of municipal fish market at Mapusa. He posed these questions as he apprehended a danger to the life of both the fish vendors as well as customers. He requested the information to be given within 48 hrs. The information, of course, was not given within 48 hrs. but reported to have been replied on 24/03/2008 by the Asst. Public Information Officer of Mapusa Municipal Council. This is stated to have been received by the Complainant on 18/04/2008, 44 days after filing the request. Replies to 5 questions were given and 6th question was noted by the Asst. Public Information Officer, for what purpose, we do not know. As the reply was not given within 48 hrs., the Complainant filed the present complaint on 25/03/2008 directly before this Commission. However, as stated earlier, a reply was said to have been issued on 24/03/2008 by the Asst. Public Information Officer. Not satisfied with the reply, the Complainant has also approached the first Appellate Authority, namely, Director of Municipal Administration. No copy of the first appeal is available on record. However, there is a mention that an order was passed by

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the first Appellate Authority on 6/6/2008 directing the Public Information Officer to give the information within 10 days. Obviously, the first Appellate Authority also was not aware of the reply by Asst. Public Information Officer. Neither this order is under challenge before us nor is relevant because a reply was sent on 24/03/2008. The Complainant, thereafter, filed a written statement bringing the subsequent facts to our notice and also prayed for imposition of fine on the Opponent for not giving the information within 48 hrs., to direct the Chief Officer to close fish market immediately for public use and also to direct the initiation of departmental action against the Chief Officer who is the Opponent here.

2. Notices were issued and the reply was filed by the Opponent.

3. The brief points that arise for our consideration is that whether the information has been given by the Public Information Officer within 48 hrs. as claimed by the Complainant and whether the direction could be issued to the Opponent to close down the fish market of Mapusa.

4. Section 7(1) enjoins on the Public Information Officer to either provide the information or to reject his request for reasons to be recorded in writing, as expeditiously as possible, and in any case within 30 days of the receipt of the request. There is a proviso to sub-section (1) of section 7 that such information should be furnished within 48 hrs. of the receipt of the request if the information sought concerns the life or liberty of a person. The information sought is about the safety of the building used by the fish vendors and also consumers, apparently owned by the Mapusa Municipal Council. If the building suffers from structural instability and is certified as such by the competent person that it is likely to collapse, naturally it is a matter of concern for the life and liberty of the persons using the premises. The Opponent has submitted in his written statement dated 15/5/2008 that the building was not declared as unsafe. However, a note circulated by Municipal Junior Engineer and approved by the Chief Officer was submitted by the Appellant which states that the building requires extensive repairs and that the fish vendors should be shifted to some other place in view of the deteriorating condition of the building. Accordingly, a resolution was adopted by the Mapusa Municipal Council. A copy of which is produced before us by the Complainant himself. The resolution mentions the decision to shift fish vendors to the adjoining open place on the western side of the building and demolishing the existing fish market immediately because of its

dangerous condition. There is no doubt that continuation of sale of fish in the same building poses a threat to life and property of both the vendors and purchasers.

5. The Opponent has submitted that the Municipal Council is making efforts to shift the vendors who are opposing such shifting. However, its efforts are not successful. The limited question which arises for our consideration is whether we can direct the Municipal Council to close the fish market and whether the information should have been given within 48 hrs. of the request. As mentioned earlier, as the life of persons visiting the market is at stake, it satisfies the requirement of the proviso of section 7(1) of the RTI Act. Therefore, the Public Information Officer, Opponent herein ought to have replied within 48 hrs. to the Complainant's request for information. We do not agree that building is not declared as unsafe as the Municipal resolution itself mentions its dangerous condition. Whether it is an unsafe building or is in dangerous condition is only a play of words. Therefore, we are of the view, that the information was not supplied in time as per section 7(1) proviso of the RTI Act.

6. It is also enjoined in the same section, that only the Public Information Officer should furnish the information to the applicants. Further, the role of the Asst. Public Information Officer mentioned in section 5(2) is only to receive and forward the information applications and information appeals to the authorities concerned. We have held in a number of cases, that the Asst. Public Information Officer has no other role and there is no point in appointing an Asst. Public Information Officer by the Mapusa Municipal Council which has no sub-divisional offices. This is a facility given to the citizens of far off places to approach a nearby officer at sub-divisional level to file the request for information or information appeal. It is not the intention of the Act that the Public Information Officer should delegate his functions to the Asst. Public Information Officer and on this count also we hold that the information is not supplied to the Complainant.

7. The next question is about the direction to be issued to the Municipal Council. The aim and the objective of the RTI Act is to provide access to information to citizen and the role of this Commission is to facilitate that access. It is not within the power of this Commission to either sit in judgment over the acts of the omission and commission of the public authority or to get the public authorities to implement their obligations except the supply of information. This

is an administrative function with which we are not concerned.

8. We now come to the prayer of imposition of penalty and disciplinary action against the Opponent. As we have held above, neither the information was furnished by the Public Information Officer nor was it given on his behalf within time. We are, therefore, constrained to issue a notice to the Opponent to show cause within 15 days from the date of this order why penalty proceedings should not be initiated against him under section 20 of the Act for failure to give information in time to the Complainant. The case to come again on 18th August, 2008 for hearing on the penalty proceedings.

Pronounced in the open court, on this 30th day of July, 2008.

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

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