

BEFORE THE GOA INFORMATION COMMISSION
PANAJI – GOA

Penalty Case No. 3/2007
In Appeal No. 79/2006

Shri M. K. Madhu
C/o Mrs. M. Monteiro,
H.No. 19/B, Aquem Alto,
Margao – Goa

.... Appellant.

V/s

1. The Public Information Officer,
Town & Country Planning Dept.,
Dempo Tower, Panaji – Goa. Respondent No. 1
2. First Appellate Authority,
Chief Town Planner,
Town & Country Planning Dept.,
Dempo Tower, Panaji – Goa Respondent No. 2

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner
(Per G. G. Kambli)

Dated : 15/11/2007

J U D G E M E N T

The Commission by its Order dated 29-05-2007 has issued the following directions to the Respondent No. 1.

“We hereby, direct the Respondent No. 1 to give the certified copies of the letters and also make an attempt to carry out the search of the file and provide the information to the Appellant as sought by him.

We are also of the view that this is a fit case for initiating the penalty proceeding under section 20 (1) and recommending disciplinary action under section 20(2) of the Act and, therefore, hereby give notices to the Respondent No.1

...2/-

to show cause as to why the penalty of Rs. 250/- per day delay should not be imposed and also as to why the disciplinary proceeding should not be recommended against him as required by section 20 (2) of the Act. Next hearing is fixed on 18/06/2007 at 11. a.m.”

2. The Respondent No. 1 filed his reply on 18-06-07 stating that as per the direction of the Commission fresh search was carried out and the information was furnished to the Appellant vide letter dated 18-06-2007. So far as the reply to the showcause notice, the Respondent No. 1 submitted that the Respondent, Public Information Officer is working without any specific rules framed and laid under section 27(2)(f), 28(iv) and 29 (2) of the Right to Information Act, 2005 (for short the Act) laying down the duties, powers in tenure of the Public Information Officer.

3. In order to appreciate the contention of the Respondent No. 1, the relevant provisions of the Act are transcribed below:-

Section 27(1): The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.....

(2)

(f): any other matter which is required to be, or may be, prescribed.

Section 28 (2):

(iv): any other matter which is required to be or may be, prescribed.

.....

Section 29 “(2): Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.”

4. It will be seen from the above that section 27 (2)(f) of the Act provides for making of rules which is required to be or which are required to be prescribed under the Act. Further clause (iv) of subsection (2) of section 28 of the Act also makes similar provision whereby the competent authority has the powers to frame rules in respect of other matter which is required to be framed under the Act or prescribed. Subsection (2) of section 29 of the Act provides that every rule made

under the Act by the State Government shall be laid as soon as it is notified, before the State legislature.

5. We fail to understand as to how the aforesaid provisions of the Act comes in the way of the functioning of the Public Information Officer. The Respondent No. 1 has not specified which are the matters in respect of which the rules are required to be made by the State Government. The Public Information Officer is not at all concerned with the provisions of section 28 as such powers are vested with the competent authorities and the Respondent No. 1 is not the Public Information Officer of the competent authority as defined in clause (e) of section 2 of the Act.

6. The role, duties, powers and responsibilities of the Public Information Officer are clearly laid down in the Act. The procedure to be followed by the Public Information Officer in dealing with application under the Act is also laid down in section 7 of the Act. The Respondent No. 1 has not pointed out any specific provision of the Act under which rules are to be made prescribing the duties, powers and responsibilities of the Public Information Officer. Therefore, contention of the Respondent No. 1 that in the absence of rules under aforesaid provisions of the Act limits the implementation of the Act cannot be accepted.

7. The Respondent No. 1 further submitted that the Public Information Officer has to rely on the information made available to him by the Officers in various Sections/Units/Cells functioning in the Public Authority under section 5 (4) of the Act. The Act has taken care of such eventualities. The provisions of subsection (4) of section 5 of the Act are very clear. The Public Information Officer has to seek the assistance of any other Officer as he or she considers it necessary for proper discharge of his duties and an Officer whose assistance has been sought under subsection (4) of section 5 is responsible for any contravention of provisions of the Act and such official shall be treated as Public Information Officer.

8. The Respondent No. 1 submits that he provided information to the Appellant based on the information provided to him by the other Officials and that he had no intention to suppress any information. In support thereof the Respondent No. 1 has produced Xerox copies of the notings from the relevant file. Based on the said

copies of notings, Commission had issued showcause notice to Shri Manorai Khandeparkar, Planning D'man-II of the department and Shri Prakash Bandodkar, Deputy Town Planner/Assistant Public Information Officer (HQ) of the said department. Both of them have filed their written submissions. During the course of hearing they were asked whether they would like to advance any oral argument to which they stated that they have nothing more to add.

9. It is seen from the copies of the noting produced by the Respondent No. 1 the application of the Appellant was inwarded under No. 6154 on 13-10-2006. The said application was processed and put up by Shri Manorai Khandeparkar, Planning D'man-II on 29-11-2006 that is after 47 days from date of receipt of the application and that too after the first appeal was filed by the Appellant. The said application was lying with Shri Manorai Khandeparkar, without any action and he suddenly woke up when the first Appeal was filed by the Appellant on 29-11-2006. It is seen from the notings put up by Shri M. Khandeparkar, the information sought by the Appellant pertained to the Town and Country Planning Board Cell and that he verbally requested the officials of the Town and Country Planning Board, that is, the Planning Draftsman Grade I, Santosh Lawande and Planning Draftsman Grade II, Delip Sawant (LDC) and Ramnath Poi, Office Record Keeper. Shri M. Khandeparkar had marked the file to Dy. Town Planner (Assistant Public Information Officer), Shri Prakash Bandodkar who in turn marked the file to Dy. Town Planner, (AK), with a request to furnish the information Dy. Town Planner, (AK) had marked the file to PD(L) and asked to discuss urgently the matter. The said PD (L) recorded his notings stating that he searched the cupboard where the files are kept related to board but the file bearing No. 40/8/TCP/96 is not available. Further, the Appellant was informed vide letter dated 30-11-2006 which is again corrected as 29-11-2006 that his application was rejected under section 7(1) of the Act for non-availability of the information in the office record.

10. During the course of hearing of the first Appeal before the first Appellate Authority on 21-12-2006, the first Appellate Authority verbally instructed Respondent No. 1 to carry out a fresh search upon receipt of the application from the Appellant giving the details of the information sought by the Appellant as can

be seen from the reply filed by the Respondent No. 2, but no order was passed. The Appellant, accordingly, submitted the details vide his application dated 27-12-2006. The same was processed and the Respondent No. 1 sought the assistance of Shri Bandodkar, Assistant Public Information Officer to carry out the fresh search as per the letter of the Appellant on 2/1/2007. Shri Bandodkar intum marked the said paper to Shri Khandeparkar on 25-01-2007 there by keeping the file with him for 23 days just for putting his signature. Further, Shri Khandeparkar has submitted his note to the Assistant Public Information Officer, Shri Bandodkar stating that the information sought by the Appellant is available in the office records and therefore the Appellant could be informed to collect the information. The draft was also put up for the approval of the Assistant Public Information Officer, Shri Bandodkar. Shri Bandodkar kept the file with him from 31-01-2007 till 5-03-2007. In the meantime, the Commission had issued the notice on 29th January 2007 of the second appeal filed by the Appellant fixing the hearing of the second appeal on 5-03-2007. It is interesting to note here that said Shri Bandodkar signs the noting put up to him by Shri Khandeparkar on 5-03-2007 after the receipt of the notice from the Commission. Thus Shri Bandodkar has kept the file with him from 31-01-2007 till 5-03-2007 that is for 33days without contributing anything and just for putting his signature. It is doubtful if he would have put his signature at all if no second appeal is filed and no notice is received from the Commission. Thus, initially when the file was marked to him by Respondent No. 1 on 2-01-2007 Shri Bandodkar retain the file with him for 23 days from 2/01/2007 to 25-01-2007.

12. Shri Khandeparkar in his written submission has admitted of having caused the delay in furnishing the information to the Appellant. He submitted that he had verbally requested the office record keeper Shri Ramnath Poi, LDC and the Daftary, Shri Jose Gomes for searching the file. However, neither the affidavit nor the statement of Shri Poi or from Shri Gomes have been produced in support of his written submission. He also admitted that he received the application on 14-10-2006 and put up the same on 29-11-2006. Therefore, the application of the Appellant was put up by Shri Khandeparkar on 29-11-2006 only when the Appellant filed the first Appeal as otherwise Shri Khandeparkar would not have put up application to the Public Information Officer at all. The reply to the

Appellant was also given within a day, which shows that no proper search was carried out by the Respondents before rejecting the request of the Appellant. The reasons given by Shri Khandeparkar that he had verbally requested the office record keeper and the Draftary to furnish the file cannot be accepted in the absence of any such statement from these officials. Shri Khandeparkar has not acted diligently and kept the application with him without giving valid reasons. Keeping the application pending for considerable time and putting up the same only after the expiry of 30 days laid down in section 7 of the Act and that too after the filing of First Appeal speaks volumes of the conduct of Shri Khandeparkar. This itself, is enough to draw adverse inference that Shri Khandeparkar has not acted bonafidely. We are not at all satisfied with the explanation given by Shri Khandeparkar. Shri Khandeparkar ought to have put up the said application to the Respondent No. 1 who is the Public Information Officer directly for Orders. The Appellant has also prayed for action under section 20 of the Act. We, therefore, hold that Shri Khandeparkar is responsible for causing the delay in providing the Information to the Appellant. He has retained the application of the Appellant for 46 days and thus he is liable for action under section 20 of the Act. Accordingly, we treat Shri M. Khandeparkar, Planning D'man-II as Public Information Officer. However, since this is the first instance which has come to the notice of this Commission in respect of Shri Khandeparkar and keeping his status as a Planning Draftsman, we impose the nominal penalty of Rs. 1000/- on him which should be recovered from his salary from the month of December 2007.

13. Coming now to Shri Prakash Bandodkar, who is the Dy. Town Planner and the Assistant Public Information Officer (HQ), in his written submissions, he has also admitted that there has been delay in providing the information and that the application dated 13-10-2006 of the Appellant was put up by Shri Monorai Khandeparkar, Planning D'man-II on 29-11-2006. Shri Bandodkar admitted that Shri Khandeparkar had submitted the file to him on stating that the information is available. However, the information desired by the applicant was not available in that file. Shri Bandodkar has not explained as to why he retained the file with him from 31-01-2007 to 5-03-2007. If the information was not available in the file he could have returned the same to Shri Khandeparkar with his remarks but he chose to remain silent for 33 days and it is only on 5-03-2007 after the receipt of the

notice of this Commission of the second appeal Shri Bandodkar signs the notings on 5-03-2007 and marked the same to Respondent No. 1. Thereafter, a letter dated 6-03-2007 was sent to the Appellant. If the information sought by the Appellant was not available as per the note dated 31-01-2007 submitted by Mr. Khandeparkar it is not understood as to how the letter dated 6-03-2007 was issued forwarding the certified copies of the documents requested by the Appellant.

14. Shri Bandodkar has not explained as to why he retained the file with him from 2-01-2007 till 25-01-2007 that is for 23 days and just after putting his signature, marked the file to Planning D'man-II, Shri Monorai Khandeparkar. However, Shri Prakash Bandodkar has not acted diligently and his casual approach has caused unnecessary delay in providing the information. No reasons are given for retaining the file first for 23 days and secondly for 33 days from 31-01-2007 to 5-03-2007. Shri Bandodkar is responsible for causing 56 days delay when under section 7(1) of the Act contemplates that the information is to be provided as expeditiously as possible but not later than 30 days. The burden of proof to explain the delay is on the Public Information Officer. Shri Bandodkar whose assistance was sought by the Respondent No. 1 has not explained the delay of 56 days. Keeping the files pending for 56 days without any valid reasons can safely be said to be malafide and deliberate. In spite of the opportunity given to Shri Bandodkar, he has not explained as to what made him to keep the file for 56 days. We, therefore, has no hesitation to hold that Shri Bandodkar, Assistant Public Information Officer has deliberately and intentionally, malafidely kept the file pending thereby contributing to the considerable delay in providing the information. It is also to be noted that ultimately the information was provided to the Appellant by letter dated 18-06-2007, which clearly indicates that no proper search was carried out and no efforts were made to trace the file and provide the information in the first instance. The letter dated 6-03-2007 issued by the Respondent No. 1 to the Appellant stating that the certified copies of the documents requested were enclosed was misleading as no complete information was provided to the Appellant.

15. We, therefore, treat Shri Prakash Bandodkar, Deputy Town Planner & the Assistant Public Information Officer as the Public Information Officer for the

purposes of section 5(5) of the Act. Since this is the first case which has come to the notice of this Commission in respect of Shri Prakash Bandodkar, we take a lenient view and impose a nominal penalty of Rs. 2500/- even though the total penalty comes to Rs. 14000/- if it is calculated at the rate of Rs. 250/- for the total 56 days.

16. Turning now to the respondent No. 1, nothing has come on record as to whether the respondent No. 1 was aware of the application dated 13-10-2006 . However, we can presume that atleast he came to know about the same on 30-11-06 when the file was put up to him by Shri Prakash Bandodkar, Deputy Town Planner & the Assistant Public Information Officer. The Respondent No. 1 marked the file to the Assistant Public Information Officer on 2-01-2007 seeking his assistance. Therefore, the Respondent No. 1 remained silent till he receives a notice from this Commission. It is only on 5-03-2007 Shri Bandodkar has put up the file to the Respondent No. 1. The Respondent No. 1 did not enquire as to the status of the application of the Appellant from 2-01-2007 till 5-03-2007. Being the Public Information Officer, he ought to have reminded Shri Bandodkar to expedite the information. This shows that the Respondent No. 1, the Public Information Officer, was not monitoring the applications received under this Act. This has ultimately resulted in inordinate and unexplained delay in providing the information. At one point of time, the Respondent No. 1 also wanted to know as to whether copies of the notings could be provided. It is also to be noted that the Respondent No. 1 vide his letter dated 6-03-2007 furnished misleading information creating an impression that certified copies of the documents sought by the Appellant were sent which is not correct position.

17. The Appellant made grievances that only copies of the 2 letters were have been provided and not certified copies and also no certified copies of the notings were provided by the Respondent to the Appellant. Being so, the Respondent No. 1 being the Public Information Officer is also responsible for not acting diligently and providing misleading and incomplete information to the Appellant. However, this being the first case of the Respondent No. 1. We take a lenient view and impose the penalty of Rs. 1000/- on him.

18. In the instant case, the Appellant sought the information vide his application dated 13/10/2006. All along the Respondent No. 1 took the plea that the information is not traceable even though the Commission in its interim order dated 28/3/2007 directed to carry out the search and provide information. It is only when the Commission passed an order dated 29/5/2007 directing the Respondent No. 1 to carry out the fresh search and provide the information and also to show cause as to why the proceedings under section 20(1) and (2) of the Act should not be initiated, the Respondents have traced the file and provided the information to the Appellant vide letter dated 18/6/2007. This clearly shows that the Respondents have not made any genuine efforts to search for the records and were giving the reply stating that the information is not traceable. The Commission has observed that in some of the cases pertaining to the Town and Country Planning Department which have come up before this Commission, a similar plea is taken by the Public Information Officers that the records are not traceable. This is not a healthy practice and defeats the very purpose of the Act, as the Department deals with important land matters.

19. In these circumstances, we pass the following order: -

ORDER

1. We direct the Respondent No. 2 to undertake the work of indexing and cataloguing of the records as per the provisions of section 4(1)(a) of the Act on war footing and complete the work within a period of 4 months.
2. The Respondent No. 2 shall issue the directions to all the Public Information Officers under his control to monitor the applications received under the Act every month so that the same are disposed off within the specified time limit laid down in the Act.
3. Shri Manorai Khandeparkar, Planning Draughtsman – II is treated as a Public Information Officer and nominal penalty of Rs.1000/-is imposed on him for the reasons explained hereinabove.
4. Shri Prakash Bandodkar, Dy. Town Planner who is also a Assistant Public Information Officer is treated as Public Information Officer and a penalty of Rs.2500/- is imposed on him for the reasons mentioned herein above.

....10/-

5. A nominal penalty of Rs.1000/- is imposed on the Respondent No. 1.
 6. The Penalties imposed on these officers shall be recovered from the salary of these officers for the month of December, 2007 and credited to the Government treasury at appropriate receipt head.
 7. The steps taken by the Respondent No. 2 for indexing and cataloguing of the records as well as the recovery of the penalty be reported to the Commission by 1st January, 2008.
 8. The Respondent No. 2 is also directed to organize training programme as per the provisions of section 26(2) of the Act within a period of 3 months.
20. A copy of this judgment and order be also sent to the Secretary to the Government Incharge of the Town and Country Planning Department, Secretariat, Porvorim, Bardez – Goa for monitoring at his level and submit a compliance report on 01/01/2008.

Announced in the open court on this 15th day of November 2007.

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

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

No. GSIC/ Penalty Case No. 3/2007/2007-08/

Goa State Information Commission,
Shrama Shakti Bhavan,
Patto, Panaji Goa

Dated: /11/2007

To,

1. The Public Information Officer,
Town & Country Planning Dept.,
Dempo Tower, Panaji – Goa.
2. First Appellate Authority,
Chief Town Planner,
Town & Country Planning Dept.,
Dempo Tower, Panaji – Goa
3. Shri Manorai Khandeparkar,
Planning D'man -II,
Town & Country Planning Dept.
4. Shri Prakash Bandodkar,
Dy. Town Planner / Assistant Public Information Officer (HQ),
Town & Country Planning Dept.,
Dempo Tower, Panajt - Goa

Sub:- Penalty proceeding No. 3/2007 in Appeal No. 79/2006

Sir,

I am directed to forward herewith the copy of the Order dated 15/11/2007 passed by the Commission on the above Appeal for information and necessary action.

Yours faithfully,

(Pratap Singh Meena)

Secretary

Encl: Copy of Order in 11 pages

