

# GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

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**Appeal No. 64/SIC/2015**

Shri Abdul Matin Carol,  
M/S Daud Electricals, 26-New Market  
Margao Goa.403601

..... Appellant

**V/s.**

1.The Public Information Officer ,  
Member Secretary,  
South Goa Planning & Development Authority,  
4<sup>th</sup> Floor, D-Wing, Osia Commercial Arcade,  
Margao Goa,

2.The First Appellate Authority,  
South Goa Planning & Development Authority,  
Having office at 4<sup>th</sup> Floor, D-Wing,  
Osia Commercial Arcade,  
Margao Goa.

..... Respondents

**CORAM:**

**Smt. Pratima K. Vernekar**, State Information Commissioner

**Filed on: 16/06/2015**

**Decided on: 17/10/2016**

## **O R D E R**

1. Brief facts of the case are that the appellant vide his application dated 18/02/2015 filed under section 6(1) of the Right to Information Act 2005 sought information at query No. 1 to 5 in respect of permission of repair of shops at new market vide letter No. 3(c)/1/2014-15/TECH/2341/ dated 30/01/2015 issued by the Margao Municipal Council.
2. The request was considered by Respondent No. 1 Public Information officer and thus provided information by their letter dated 10/03/2015. vide said letter the Respondent No. 1 Public information officer has informed the appellant that the information as sought by him is available in **"The Goa Land Development and Building**

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**Construction Regulation 2010 which regulates the development within area under its jurisdiction that is Margao Municipal Area and Ponda Municipal Area.”** They

further informed by said letter that the said regulations are notified and are available in Government Printing Press.

3. Being not satisfied with the reply dated 10/03/2015 given to him by Respondent No. 1 PIO, Appellant preferred First Appeal to the Respondent No. 2 South Goa planning and development authority Margao Goa and by order dated 11/08/2015 Respondent No. 2 First Appellate Authority dismissed the appeal of the Appellant.
4. Being aggrieved by the order of Respondent No. 2 First Appellate Authority, the present second appeal is filed before this commission seeking in prayer for direction as against Respondent No.1 PIO to provide the desire information free of cost.
5. Pursuant to the notice during one hearing the appellant remained present hearing and subsequent remained absent. Both Respondent though duly served opted to remain absent nor filed their reply.
6. After giving opportunity to both the parties, this commission had no option then to decide the said appeal on merits based on the documents.
7. On perusal of the said application dated 18/02/2015 it is seen that the appellant had sought certified copy of the specific section/sub section/clause/Rules and Regulations of the Law that refers to powers allotted to Municipalities by the Government of Goa to demand Development Permission from SGPDA to issue repair permission by Municipal Councils to carry out
  1. Constructions of Cement Concrete Wall,
  2. Concreting of shop flooring
  3. Repairs to be carried out on the ceiling replacement of wooden ribs and the cement sheets which have been corroded.
  4. Name and address of authorities responsible for carrying out the repairs and maintenance of septic tank of the municipal toilets

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5. Action taken report to my complaints in regards to seepage of Raw Sewage water into my shop premises .

**8. As per section 2(f) of Right to Information Act "information" means any , material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being *in force*;**

and

Section 2(j) of the act gives the extent of right to the seeker as under:

***2(j) right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-***

A conjoint reading of these provisions shows that a seeker can exercise his rights in the form and manner as specifies in section 2(j) in respect of the records as specified in section 2(f)

9. A perusal of queries put forth by the appellant in his application under section 6 (1) of the Act, if carefully analyzed, shows that the seeker wants to know the provision of law under which certain acts were done by the Public Authority. In other words the appellant has sought for opinion as to under which law certain acts were done by public authority.

It is to be noted that a public authority has the information and PIO is designated to furnish the same to public. In other words the PIO is the custodian of the information to be posted to applicant seekers. Only powers are granted to PIO to decide at time of dispensing information is that it does not come under the

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exemptions as specified in section 8 of the Act. Thus the PIO has to furnish the information in his custody unless exempted.

While requiring PIO to furnish the information, he cannot be called upon to create information for being furnished. He also cannot be expected to give the background under which certain information was created or held by public authority. PIO is not supposed to know the views, logic and reasons of the author of information.

In the present case the information sought is in the form of legal opinion and in the nature of general queries. If at all such notices, correspondences letters etc are issued in exercise of power under certain legal provisions the same may be reflected in the documents which it self constitute and information. However in case the provision of law under which the action is taken or instruction issued are not contained in any such correspondences letters etc, PIO is not excepted to prepare his own opinion to be furnished to the seekers.

10. Hon'ble supreme Court in "***Central Board of Secondary Education and another V/s Aditya Bandopadhyay and Others ( Civil Appeal No. 6454 of 2011)***", while dealing with the extent of information under the Act at para 35 has observed:

*" At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the act. If a public authority has any information in the form of data or analyzed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under*

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*any law or the rules or regulations of the public authority, to collect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."*

11. By applying the same ratio to the present Appeal, we find that the information sought by appellant under section 6(1) of the act vide his application dated 18/02/2015 is in the form of advise and hence does not come within purview of definition of information. Hence we find no irregularity or perversity in the reply of PIO or in the order of the first appellate authority.

The information sought query No. 1 to 5 are very vague and ambiguous making it difficult for Public Information Officers to provide specific answer. As per the Right to Information Act the Roll of Public Information Officer is to provide information as it what is available. PIO is not supposed to undertake research work to analyzes information or give an opinion on the information held by him or to satisfaction of the whims and fancies information seekers.

It is seen from the records that First appeal was filed by the appellant on 13/3/15 the said appeal was disposed by an order dated 11/08/15 apparently there is a delay in disposing the 1<sup>st</sup> appeal. The Respondent No. 2 First Appellate authority has failed to comply with requirement as contemplated under section 19(1) of Right to information Act there by interfering with assist of this Act the Respondent No. 2

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First Appellate authority failed to appear inspite of notice no reply was filed by First Appellate authority such act of part of First Appellate authority is hereby admonished that such an irresponsible behavior is against of mandate of Right to Information Act and will be viewed seriously.

In view of above circumstances I have not hesitation in upholding the say of both the Respondents. As such I am declined to grant the prayer sought in the present appeal.

The appeal disposed accordingly proceedings stands closed.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Pronounced in the open court.

Appeal is stands dismissed liberty is hereby given to the appellant.

Sd/-  
**(Ms.Pratima K. Vernekar)**  
State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa