

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner.

Appeal No.92/SCIC/2015

**Ms.Elvina Barreto,
H. No.553,Colsor,
Galgibaga, Canacona - Goa.**

.....Appellant

V/s.

1. The Public Information Officer.
Deputy Collector and Sub Division Officer,
Canacona -Goa
2. The First Appellant Authority , Additional
Collector-I,
South Goa District,
Margao- Goa

.....Respondents

Appeal filed on:17/08/2015

Decided on: 18/04/2017

ORDER

1. The Appellant Mrs. Elvina Barreto herein, in exercise of her right under 6(1) of right to information Act (Act for Short) by her application dated 15/06/2015 sought information from the Public Information Officer (PIO), Deputy Collector and Sub Divisional Office Cancona –Goa who is Respondent No. 1 herein. She had sought certified copy of the file No. CRC/CORR/39/95 based on Mamlatdar of Cancona record book of land matríz certificate number 782 of survey no. 179/7, of Poinguinim Village, to which reply was filed by the Respondent, Public Information Officer (PIO) on 24th June 2014 informing the Appellant that the information is not available in their Office.
2. Since the Appellant was not satisfied with the reply of the Respondent No. 1 PIO. She filed first Appeal before First Appellate Authority (FAA) on 06/07/2015. The First Appellate Authority disposed the said appeal by an Order dated 21/07/2015 allowing the Appeal and by the said Order directed Respondent PIO to provide all the information sought by the Appellant within 15 days from the receipt of the order.
3. Since the information was not provided to her and being aggrieved by the action of the Respondent No. 1, PIO, the present second Appeal came to be filed before this Commission on 17/08/2015 with the prayer for directions to

Respondent No. 1, PIO to provide her information as sought by her by an application dated 15/06/2015.

4. In pursuant to the notice of this Commission, Appellant appeared in person. On behalf of the Respondent PIO, Shri Amol Gaonkar was present.
5. Reply came to be filed on behalf of PIO on 6/05/2016 and on 28/09/2016.
6. Arguments were heard on behalf of both the parties
7. It is submitted by the Appellant that the PIO has deliberately not traced corrigendum file number CRC/CORR/39/95 with the purpose to hide the forged entry made in the record book of land matrix certificate number 782. She further submitted that Deputy Collector and SDO, Quepem transferred corrigendum file No. CRC/CORR/39/95 which was prepared based on the Mamlatdar of Cancona record book of land matrix certificate number 782 of survey no. 179/7 of Ponguinim village
8. The Respondent PIO, Shri Amol Gaonkar submitted that there does not exist any file called CRC/CORR/39/95 in the records of the Mamlatdar of Cancona. He further submitted that the records of the file LRC/CORR/39/95 is available with the Office of Deputy Collector of Quepem. It is his further submission that the order was passed by the first Appellate Authority without hearing them as such could not put up their submission of non availability of the concern file before first Appellate Authority. He accordingly filed his reply cum Affidavit on record.
9. I have considered the arguments of both the parties and perused the documents on record. It is seen that the initial reply which was given to the Appellant also reveals that the information was not available. The order of the FAA dated 21/07/2015 reveals that only the Appellant was heard. The reply of the Respondent cum affidavit dated 28/09/2016 which was duly notarised before notary reveals that he had searched the whole records of their office to identify the case bearing no. CRC/CORR/39/95 and that there is no such case file available in their office records. It is the case of Respondents right from the inception that the records are not available with them.
10. The nature of the information which can be furnish to a information seeker is discussed by the Hon'ble Supreme Court in the case of Central Board of Secondary Education and another V/s Aditya Bandopadhyay and others civil appeal NO.6A54 of 2011, wherein at para 35 thereof it is observed:

35. *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 analysed 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 any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant.....

Thus information which is not held by any public authority and which cannot be accessed by any public authority under any law for the time being in force does not fall within a scope of the Act. The Apex court has clarified that the Act provides access to all information that is available and existing and that it does not cast an obligation upon the public authority to collate such non available information and then furnish to the Appellant.

11. By applying the same ratio to the present appeal, I am of the opinion that under the Right to Information Act the public authority could only provide access to all the information that is available and existing. If a public authority has an information in the form of data or analyse data or abstracts or statistics an applicant may access such information, subject to the exception of section 8 of the Act. Here in the present case the appellant is trying to seek information which is not in existence and as such could not be directed to provide the same. The PIO can legitimately provide only the information which is available with the public authority. The PIO cannot be expected to create or generate the information because the particular information has been sought.
12. The other grievances of appellant regarding forgery etc can be redressed before competent forum.
13. In the above given circumstances, I am of the opinion that the prayer sought by the Appellant cannot be granted.
14. Appeal is 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 under the Right to Information Act 2005.

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

