

**GOA STATE INFORMATION COMMISSION**

Kamat Tower, Seventh Floor, PattoPanaji-Goa

**CORAM: Smt. Pratima K. Vernekar,  
State Information Commissioner.****Appeal 113/SIC/2015****Ms. Elvina Barreto,  
H. No. 553, Colsor,  
Galgibaga, Canacona-Goa****...Appellant****V/s.****Public Information Officer,  
Mamlatdar of Cancona Taluka,  
Canacona-Goa****.....Respondent****Appeal filed on;-21/10/2015  
Decided on: 20/06/2017****ORDER**

1. By an application, dated 22/05/2015, the appellant Smt. Elvina Barreto sought information from the Public Information Officer (PIO), the District Collector, Collectorate of South Goa at Margao-Goa. The Appellant has sought information with respect to the file No. CRC/CORR/39/35 with regards to Land and Matriz Certificate No. 782 of Survey No. 179/7 of Poinginim Village. And also copy of the inquiry of date/time on which the said entry of name Mercina Fernandes was made so during whose tenure as Mamlatdar/dealing hand the said was made.
2. The PIO, District Collector then transferred the said application to the PIO, Deputy Collector and SDO, Quepem Goa on 8/06/2015 who in turn transferred the said to the Mamlatdar of Cancona on 19/06/2015 under section 6(3) of the Right to Information Act, 2005 (RTI Act 2005).

3. The application of the appellant dated 22/05/2015 was then replied by the Respondent No. 1 PIO, Mamlatdar of Cancona Taluka on 27/07/2015. Vide said reply the PIO have informed that the said information as sought by her is not available with their office and the said fact was already informed to her earlier vide their office letter No. MAM/CAN/Matriz/2015-2016/482 dated 15/06/2016.
4. Being not satisfied with the reply given to her, the appellant then preferred 1<sup>st</sup> appeal on 13/08/2015 before the Deputy Collector /Sub Division Officer, at Cancona being First Appellate Authority.
5. The First Appellate Authority (FAA) dismissed the said appeal by an order.
6. Being aggrieved by the action of both the Respondent No. 1, PIO and FAA, the Appellant have approached this Commission on 21/10/2015 by way of second appeal with the prayer for direction against Respondent PIO for furnishing her the information as sought by her vide her application dated 22/05/2015.
7. The matter was listed on board and taken up for hearing. In pursuant to the notice the appellant appeared in person Respondent PIO was represented by Shri Ramesh Gaonkar who filed reply to the present appeal on 23/06/2016. And also on 28/09/2016 affirming the said facts on oath.
8. Rejoinder also came to be filed by appellant on 28/09/2016 and affidavit is also filed by her on 6/12/2016 enclosing annexure. The copy of the same was furnished to the Respondent and the Respondent file affidavit in reply on 6/03/2017.
9. Written arguments also came to be filed on behalf of Appellant on 18/04/2017. It is her contention that the Public Authority have deliberately answered that the said file is not traceable /information is not available, is with the purpose to hide forgery made in the record book of land Matriz certificate No. 782. It is her further contention that based on

the forged entry and fraudulent order created new records under missing file No. CRC/CORR/39/95 with the purpose to make mutation No. 244 invalid and to Change survey plan in future. It is her further contention that the PIO found a file with case No. LRC/CORR/39/95 and it was given to her on 10/04/2015.

Vide her written arguments dated 18/04/2017 she has also sought for the directions for conducting inquiry during whose tenure as Technical Officer, made an entry in the Respondent Office Land Record book and who made a specific request to change the record of land as well as, house to make e-documentation by using financial muscle powers.

10. I have considered arguments of both the parties and perused the documents on records

11. It is case of the Respondents right from the inception that records are not available with them. A similar application concerning same file was filed by the appellant on 15/06/2015 with PIO of Deputy Collector and sub-divisional Office, Cancona to which it was also replied by that PIO on 24/06/2014 informing the appellant that the information is not available in their office records. In the said case also the appellant had landed up before this Commission by second Appeal on 17/08/2015 which was disposed by this Commission on 18/04/2017. In the said appeal also the information which was sought was concerning the same subject matter/file.

12. The nature of the information which can be furnish to a 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.

**13.** 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.

**14.** In the above given circumstances, I am of the opinion that the prayer sought by the Appellant cannot be granted.

15. 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/-

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

Kk/-fn