

# GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

**Shri Prashant S. P. Tendolkar,**  
State Chief Information Commissioner

## **Appeal No.197/CIC/2018**

Shri Yogesh P. Raythatha,  
r/o. Shop No.3, Seagull Appts.,  
B. G. Road (Near Market),  
Panaji-Goa.

..... Appellant

V/s

- 1) The Public Information Officer,  
Cooperative Tribunal Goa,  
Dr. Vaidya Hospital Building, 3<sup>rd</sup> floor,  
Market, Panaji Goa.
- 2) The First Appellate Authority,  
Cooperative Tribunal Goa,  
Dr. Vaidya Hospital Building, 3<sup>rd</sup> floor,  
Market,, Panaji -Goa. .... Respondents

Filed on: 24/10/2017  
Registered on:31/08/2018  
Disposed on:15/11/2018

### **1) FACTS IN BRIEF:**

a) The appellant herein by his application, dated 07/09/2016 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO under several points therein.

b) The said application was replied on 26/09/2016 asking the appellant to inspect the file and that thereafter information would be furnished. According to appellant and as submitted by him in the course of arguments, he undertook the inspection and thereafter vide reply dated 06/10/2016, the PIO furnished the information.

c) According to appellant the information as sought was not complete as the information at points (4), part of (5),

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(9) and (10) was not furnished. Hence the appellant filed first appeal to the respondent No. 2, being the First Appellate Authority (FAA).

d) The appellant has therefore landed before this commission in this second appeal u/s 19(3) of the act on 24/10/2017. However the same was registered on 31/08/2018.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 16/10/2018 filed reply to the appeal. Vide his said reply it is the contention of PIO that appeal is not maintainable. According to him the appellant could have sought the copies of documents from the related appeal No.06/2005, wherein he was a party, without coming under the Act. According to PIO the required information was furnished on 06/10/2016.

f) Argument where heard. In his arguments the appellant submitted that as the information at point No.4, 5(part), 9 and 10 were not furnished he filed the first appeal. According to him the documents at said points 4, 5, 9 and 10 were referred by the presiding officer of the Co-Operative Tribunal in the judgment passed by said Tribunal in appeal No.06/2005 and hence they should have been on record. According to him in the absence of said records the said judgment could not have been passed.

The appellant further submitted that as he was not furnished the said document, as his information, he has filed the first appeal to the Respondent No.2. It is further according to him that nowhere the FAA has held that information as not available. The appellant further took

me to paras 9 and 10 of the order of the FAA and submitted that the FAA has discussed some extraneous issues pertaining to said Co-operative Appeal No. 06/2005 and has wrongly held that appellant ought to have filed review application or challenge the decision of the Tribunal before the High Court. According to appellant such observations are beyond the scope of RTI Act. He also pointed out that the FAA in said order has taken a partisan view that the appellant should have approached concerned court, which are contrary to intent of the act. The appellant further submitted that the decision of the PIO, that some of the documents are not available, has not attained finality by any confirmation from the FAA he has filed his second appeal.

f) In his submissions PIO submitted that whatever the document which are available in the concerned file were furnished to the appellant and that the information at point 4, part of 5, 9 and 10, which the appellant contends, as not received is actually not available in the said records. According to him the non-availability of the said documents is also confirmed by the appellant during his inspection. The appellant herein in the course of his submission has fairly admitted that he has inspected the file and that the said documents are not actually found in the file.

**2) FINDING:**

a) Perused the record and considered the submissions of the parties. Section 2(f) of the act which defines information, reads:

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- “2(f) “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 for”(emphasis supplied)

From the above definition it is clear that for dispensing information, what is sought should actually exist in any of the form referred in said section 2(f) of the act. Thus the existence of information is a prerequisite for its dispensation. I am also fortified in this view on the bases of the ratio laid down by the Hon’ble Supreme Court in the case of Central Board of Secondary Education V/s Aditya Bandopadhyay relevant portion reads:

**“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,

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*to collect or collate such no 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.”*

b) In the present case it is not in dispute that the information at point 4, 5 (part), 9 and 10 are not existing in the concerned file. Thus same does not constitute a dispensable information under the act. The response of PIO dated 06/10/2016, u/s 7(1) of the act is justified. In these circumstances I find no ground to interfere with the reply of the PIO.

c) Coming to the order of the FAA it is required to be observed that the jurisdiction of such authority is limited to the extent of deciding legality or propriety of the response of the PIO to the application u/s 6(1) filed by the seeker. In the present case it appears that FAA has mixed-up the jurisdiction granted to it under the act with the one under The Cooperative Societies Act, as a judicial Authority. Considering the overriding effect u/s 22 of the act, notwithstanding the similar provisions under any other act, the appellants application u/s 6(1) is maintainable. However such request is subject to the fee for information other than the one prescribed under the act, if otherwise laid down by any rules framed under other law, which may apply to the respondent Authority. The observation of Hon'ble Apex Court in the case of Ramchandra Adkear is not applicable in the present situation.

d) In the back drop of the above facts I find no ground to interfere with the response dated 06/10/2016 of the PIO and consequently the same is upheld. Therefore find no merit in the appeal. The same is disposed with the following order.

Stands dismissed.

Order to be communicated.

Proceedings closed.

Sd/-

**(Shri. P. S.P. Tendolkar)**

Chief Information Commissioner  
Goa State Information Commission  
Panaji –Goa