

# **GOA STATE INFORMATION COMMISSION**

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**Shri Sanjay N. Dhavalikar**, State Information Commissioner

## **Appeal No. 154/2021/SIC**

Franky Monteiro,  
H.No. 501, Devote,  
Loutulim, Salcete-Goa.

..... Appellant

v/s

1. The Public Information Officer,  
Dy. Conservator of Forests,  
Working Plan Division,  
Goa Van Bhavan, Altinho, Panaji

2. The First Appellate Authority,  
Conservator of Forests (WL & ET),  
Goa Van Bhavan, Altinho, Panaji.

..... Respondents

**Filed on : 13/07/2021**

**Decided on : 22/10/2021**

### **Relevant dates emerging from appeal:**

RTI application filed on	: 05/05/2021
PIO replied on	: 17/05/2021
First appeal filed on	: 11/06/2021
First Appellate Authority Order passed on	: 30/06/2021
Second appeal received on	: 13/07/2021

## **ORDER**

1. The second Appeal filed under section 19(3) of the Right to Information Act, 2005 (for short, the Act) by the Appellant, Shri. Franky Monteiro, resident of Loutulim, Salcete Goa, against Respondent No. 1 Public Information Officer (PIO), Deputy Conservator of Forests, Goa Van Bhavan, Panaji and Respondent No. 2, First Appellate Authority (FAA), Conservator of Forests, Goa Van Bhavan, Panaji, came before this Commission on 13/07/2021.
2. The brief facts leading to the second appeal, as contended by the Appellant are:-

- (a) That the Appellant, vide application dated 05/05/2021 sought from the PIO information on seven points as mentioned in the said application. The PIO vide letter dated 17/05/2021 refused the information stating the information sought is sub-judice. That the reply was not satisfactory, the Appellant preferred appeal before the FAA on 11/06/2021.
- (b) That the FAA heard the Appeal on 25/06/2021 and passed order dated 30/06/2021 directing PIO to provide only specific information and that the Appellant found this order unsatisfactory and therefore filed second appeal before this Commission.
- (c) That the Appellant filed second Appeal dated 13/07/2021 against PIO and FAA with following prayers:- (i) Direct PIO to furnish complete information, (ii) Direct Respondent to compensate Appellant under section 19(8)(vi)(b) of the Act, (iii) Penalty be imposed on Respondents for causing deliberate delay and harassment to the Appellant.
3. The Appeal was registered in the Commission and parties were notified. Pursuant to the notice Appellant and both Respondents appeared before the Commission. PIO Shri. Anisha Kalkoor appeared in person, filed reply dated 24/08/2021. Shri. Amar Heblekar, Assistant Conservator of Forests represented the FAA under authority letter and filed reply dated 24/08/2021 on behalf of the FAA Shri. Sourabh Kumar. Appellant filed written submission dated 20/09/2021.
4. The PIO stated in his reply that the information sought by the Appellant is voluminous and the Appellant was informed that the said information is sub-judice before National Green Tribunal and therefore cannot be furnished. That the said information pertains to the Appellant as well as other persons and it is considered to be third party information under section 11 of the Act, and seeking

consent of all third party persons is practically not possible. That the FAA had directed the Appellant to seek specific information, however the Appellant did not contact PIO for specific information but approached this Commission. Therefore the information could not be furnished to the Appellant.

5. The FAA stated vide reply dated 24/08/2021 that based on the arguments put forth by both the sides, the case was disposed on 30/06/2021 vide which the Appellant was asked to provide details of specific survey numbers for which information is required and PIO was directed to provide the specific information. However, Appellant did not provide specific details and the information could not be furnished to him.
6. The Appellant stated in appeal memo and written submission dated 20/09/2021 that the PIO, though claimed the matter as sub-judice, has not furnished any documents to substantiate the statement. Also, provisions of the Act does not exempt information which sub-judice before courts from being provided. That all survey records, land records in any office or sale deeds executed before sub Registrar are public documents. There is no secrecy in the exercise of ground survey carried out by the Respondent as the said exercise is publicly carried out after being notified to Public through publication in the newspapers.
7. After careful perusal of all submissions of both the sides, it is seen that the PIO has not claimed exemption under any sub clauses of section 8 of the Act, which exempts certain information from disclosure. Also as the information sought is already in public domain, the information does not qualify to be classified as third party information under section 11 of the Act. In spite of these facts the PIO has denied the information to the Appellant.
8. Section 19(5) of the Act reads as under:- 19. Appeal - (5) In any Appeal proceedings, the onus to prove that a denial of a request

was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

9. The above mentioned provision of law is upheld by the Honble High Court of Delhi in the matter of **State Bank of India V/s Mohd. Shahjahan (W.P. No. 9810/2009 and CM Appl No. 8001/2009)**. The Hon'ble High Court has held at para 22.

*"22. The very object and purpose of the RTI Act is to make the working of Public Authorities transparent and accountable for the purpose of RTI Act all information held by a Public Authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the Public Authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed. The burden therefore is entirely on the Public Authority to show why the information sought from it should not be disclosed."*

In the light of above ratio laid down by the Hon'ble Delhi High Court, the PIO has to furnish information or justify the denial.

10. It is seen that the PIO initially denied the information at the stage of reply to the application as well as before the FAA and this Commission. However later during the proceeding of this Appeal, PIO agreed to adhere to the directions of this Commission. Keeping this in mind, the Commission is inclined to take a lenient view and spare the PIO from penal action.
11. In view of the above discussion, the Commission holds and that the information sought by the Appellant has to be furnished. With the findings mentioned above the appeal is disposed with following order:-
- (a) The Appeal is partly allowed.

- (b) The PIO is directed to furnish the information sought by the Appellant vide application dated 05/05/2021 within 15 days from the receipt of this order, free of cost.
- (c) All other prayers are rejected.

Appeal disposed accordingly and proceedings stands closed.

Pronounced in the open court.

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.

Sd/-

**Sanjay N. Dhavalikar**  
State Information Commissioner  
Goa State Information Commission  
Panaji - Goa