

GOA STATE INFORMATION COMMISSION AT PANAJI

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Appeal No. 30/SCIC/2010

Shri Allan Falleiro,
H.No. 400, Toleband
Loutolim, Salcete – Goa.

.... Appellant

V/s

- 1) Public Information Officer,
Inspector of Survey & Land Records,
Margao – Goa. Respondent No. 1.
- 2) First Appellate Authority,
Director of Settlement & Land Records,
Panaji – Goa. Respondent No. 2.
- 3) Superintendent of Survey & Land Records,
(Who act as PIO Margao when required),
Dte. Of Settlement & Land Records,
Panaji – Goa. Respondent No. 3.

Appellant in person.

Respondent No. 1, 2 and 3 in person.

JUDGMENT (14/05/2010)

The Appellant, Allan Falleiro, has preferred this second Appeal praying that Respondent No. 1 be directed to give complete information sought to the appellant without any delay and to punish the Respondent No. 1 as provided in the Act.

2. The brief facts leading to the present appeal are as under:-

That the Appellant by his letter dated 06/11/2009 had requested for certain information under Right to Information Act 2005 ('RTI' Act for short). That a misleading information was provided by respondent No.1 to item at Sr. No. 2 and 5 by letter No. ISLR/MAR/RTI/09/2057 dated 30/11/2009 stating that " point at Sr. No. 2 does not come within the ambit of section 2 (f) of RTI Act" and a similar answer was given for item at Sr. No. 5 (at page 4) with the First Appellate Authority (FAA for short). It is the case of the Appellant that the appeal was never admitted or heard by the FAA but an order was passed on 22/01/2010 and forwarded by a letter dated 25/01/2010. That the Respondent No. 1 and 2 have ignored the definition of information under section 2(f) in order to

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deprive the Appellant of the information sought. That the Respondent No. 2 has shown scant respect to RTI Act and has been disposing the Appeals without hearing the Appellant in order to deprive the Appellant of the information.

Being aggrieved by the order of the First Appellate Authority the Appellant has preferred this appeal on the grounds set out in the memo of Appeal.

3. The Respondents resist the Appeal and their say is on record. It is the case of Respondent No. 2 that the Respondent No. 2 after perusing the replies given by respondent No. 1 passed a detailed order dated 22/1/2010, after carefully analyzing reply furnished by Respondent No. 1. That the Appellant has been furnished whatever information was within the ambit of section 2 (f) of the RTI Act 2005 and the Appellant was correctly informed whatever that was not available with the public authority and accordingly order was passed. It is also the case of Respondent No. 2 that considering the nature of information sought and the answers already provided, the respondent No.2 felt that there was no need for any personal hearing as such hearing would not serve much purpose.

4. It is the case of the Respondent No. 3 that he holds charge of superintendent of surveys & land Records, Margao on account of retirement of incumbent SSLR at Margao and consequently, holds the charge of Public Information Officer, Margao, that Inspector of Surveys & Land Records Margao is designated as Assistant Public Information Officer Margao, notified under the Act under Section 5 of the RTI Act 2005. It is the case of Respondent No. 3 that the Appellant had sought information through a questionnaire format seeking answers to seven questions posed by him. That APIO had furnished whatever information available with the public Authority and informed the Appellant whatever that is not available in the file as per section 2(f) of RTI Act vide letter dated 30/11/2009. That full file was made available to the Appellant. The Respondent No. 3 also refers to First Appeal and the order passed. It is further the case of Respondent No. 3

that only such information is required to be supplied under the Act, which already exists and is held by the Public Authority or held under the control of Public Authority. That the PIO is not supposed to create information or to interpret information or to solve problems raised by the applicants or to furnish replies to the hypothetical questions. That the queries raised by the appellant do not qualify to as “information” to attract section 2(f) of the RTI Act 2005. That there is no denial of information.

5. Appellant submitted written arguments, which are on record. Respondent No. 3 also filed written arguments and other relied on the reply filed.

6. I have carefully gone through the records of the case and also considered the written arguments on records. The point that arises for my consideration is whatever the appellant is entitled for the relief prayed?

It would not be out of place to mention the definition of information. Under section 2(f) “information” mean 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 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.

Under section 2(i) “ records” has been defined widely to include any document, Manuscript, files etc. Under clause 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 the powers under the Act includes right to: (a) inspect works, documents, records of any public authority; (b)take notes, extracts or certified copies of documents or records; (c) take certified samples of material and (d) obtain information of print outs, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print outs where such information is stored in a computer or in any other device.

7. In the case at hand the Appellant sought information by his letter dated 06/11/2009. The information is in the nature of 7 points. By reply dated 30/11/2009. the information has been furnished. It is seen that point No. 1, 3, 4 and 7 are answered. It is informed that point No. 2 and 5 do not come within the ambit of section 2 (f) of the RTI Act. Point No. 6 is regarding inspection and it appears that the same has been given. It appears that being not satisfied the appellant preferred the first appeal. However the appeal was dismissed. I will refer to this aspect a little later. It was the contention of the Appellant that replies provided to item Nos. 2, 3, 4 is false and information provided to point No. 5 are contradictory and to point No. 7 is false. In the appeal memo before this Commission it is contended that misleading information is provided to item at Sr. No. 2 & 5.

I shall reproduce point NO. 2 & 5 and the answers given.

“2. Inform me if the Captain of Ports is a competent authority under land Revenue code to authorize a survey of a private property, if yes give section No. of the LR code/copy of gazette.

Reply Point at Sr. No. 2 does not come within the ambit of section 2 (f) of RTI Act”.

5. Who is the competent authority in the office of the Inspector of Survey and Land Records, Margao that can authorize a survey of a private property by trespass and by intimation under the land revenue code?

Reply This does not come within the section 2 (f) of RTI Act”.

It is to be noted here that section 2 (f) provided only information held or under the control of any public authority. It, therefore, necessarily implies that the information to which an information seeker is entitled can only be that which is available on records of Public Authority concerned. It does not mean that an information seeker can solicit opinion from public Information officer of a public authority.

8. I have perused some of the ruling of CIC on the point. They are as under;-

Shri Subhash Chandra Agrawal V/s Department of Justice, Ministry of Law & Justice (Application No. CIC/AT/2007/00155 dated 10/05/2007) the Commission held that asking “ who is the appointing and disciplinary authority for Judges and Chief

Justices of High courts and Supreme Court? amounts to expecting the respondents to provide their interpretation of constitutional and other laws. What the Appellant is asking is neither a 'material' as stipulated in section 2 (f) nor it is held by the Respondents as in section 2(j). Appeal rejected.

In Dr. D. V. Rao V/s Department of Legal Affairs, Shastri Bhavan, New Delhi (File No. CIC/AT/A/2006/00045 dated 21/04/2006) where the information sought "Why the recruitment rules were amended" the Chief Information Commissioner held that RTI Act does not cast on public authority any obligation to answer queries in which attempt is made to elicit answers to questions with prefixes such as why, what, when and whether.

9. It is held (as decided by Chief Information Commissioner in K. Anand Kini V/s Canara Bank on 10/05/2007) that no queries like why, what, how etc can be answered by a public Authority. In the guise of information seeking explanations and queries about nature and quality of action of public authority need not be raised for answer. Again it is held that RTI Act does not cast on the public Authority any obligation to answer queries in which attempt is made to elicit to questions with prefixes such as why, what, when and whether.

10. In Vibhor Dileep Baria V/s Central Excise and Customs Nashik (Appeal No.CIC/At/A2006/00588 dated 30/11/2006) information sought was in the nature of some questions starting with 'whether'. In para 11 it is observed as under:-

"11. Right to information Act confers on all citizen a right to access information and this right has been defined under section 2 (j) of the said Act. An analysis of this section would make it clear that the right relates to information that is held by or under the control of any public authority. If the public authority does not hold information or the information cannot be accessed by it under section 2 (f) or if the information is non-est, the public authority cannot provide the same under the Act. The Act does not make it obligatory on the part of the public authority to create information for the purpose of its dissemination'. Again in para 14 it is observed.

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“14. Thus information would mean any material in existence and apparently it cannot mean and include something that is not in existence or has to be created. An “opinion” or an “advice” if it is a part of the record is “information” but one cannot seek from PIO either an “opinion” or an “advice” as seeking such opinion or advice would be in effect seeking a decision which the C.P.I.O. may not be competent or authorized to take. Similarly the existing report is information but preparing a report after an inquiry cannot be treated as available “ information”. Like wise the data maintained in any electronic form is “ information” and the whole of such data or a part there of can be made available to an applicant by a public authority under the RTI Act. But making an analysis of data or deriving certain inferences or conclusions based upon the data so collected cannot be expected to be done by C.P.I.O. under the RTI Act. On the same analogy, answering a question or proffering advice or making suggestion to an applicant is clearly beyond the purview of the Right to Information Act.”

In terms of provision of RTI Act a citizen is entitled to seek disclosure of information that is available in material form with public authority, that is the information is available in any file or document and the like. In the present case the information sought at point No. 2 and 5 cannot definitely be traced to any document or record of public authority and therefore the question of disclosing the said information does not arise. In the light of the above rulings the above point No. 2 and 5 do not come within the purview of RTI Act.

8. Coming to questions/points it is seen that answers as available been furnished. Besides appellant, it appears, has taken inspection. Regarding point 7 it is answered as “not available in this office you may obtain form Captain of Ports”. However, since PIO known where it is, request could be sent/transferred under section 6(3) to that authority under intimation to the Appellant.

9. In view of all the above I am of the opinion that the appeal is to be allowed only to the extant of transferring the application to the Captain of Ports. Hence I pass the following order: -

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O R D E R

Appeal is partly allowed to the extent of point No. 7 of the appellant's application dated 06/11/2009 and the PIO/Respondent No. 3 is directed to transfer the said point No. 7 to the concerned department/Captain of Ports under section 6 (3) of RTI Act within five days from the receipt of order under intimation to the Appellant and the Appellant to deal with the same.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 14th day of May, 2010.

Sd/-
(M. S. Keny)
State Chief Information Commissioner

