

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 15/SCIC/2010

Shri Abdul Matin Daud Carol,
Shop No. 26, New Market,
Margao –Goa.

....

Complainant

V/s

The Public Information Officer,
O/o the Under Secretary Revenue,
Govt. of Goa,
Secretariat, Porvorim,
Bardez-Goa.

....

Opponent

Complainant alongwith his Adv. Mukharjee present in person.
Opponent present in person.

O R D E R (04/08/2010)

1. The Complainant ,Shri Abdul Matin Daud Carol, has filed this Complaint praying that Opponent be directed to furnish all the information referred in the letter dated 25/11/2009 to the effect of implementing the resolution dated 16/07/1999 and the process including the noting in the file in respect of Acquisition of land, referred in the letter and that the Public Information Officer Land Revenue to be punished for not furnishing the required information within time.

2. The brief facts leading to the present Complaint are as under. That the Complainant has written various letters to the different authorities a number of time for the last about 15 years for the suitable land to be used for the purpose of Kabrastan. However, so far the land has not been allotted by the Government of Goa despite the fact that a resolution to that effect was also taken in the Goa legislative Assembly vide resolution No. 26 on 16/07/1999. That the Complainant to seek information about the out come of the resolution, addressed a letter dated 25/11/2009 to the Opponent under section 6 of the Right to Information Act 2005 ('RTI' Act for short) in respect of acquiring and allotment of the Comunidade land admeasuring an area 199513 sq. mts. surveyed under Chalta No. 52 of PT Sheet No. 228 situated behind St. Sebastiao Church Aquem Alto , Margao belonging to the Comunidade of Margao to be used as burial ground, Cemetery and Crematorium for Muslims, Catholics and Hindu community from Margao which was notified for acquisition. That the Complainant

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sought certain documents under Right to Information Act. That the Complainant received letter from Opponent dated 04/12/2009 stating that he should deposit an amount of Rs. 20 with the cashier of GAD Secretariat Porvorim and accordingly the Complainant has deposited the said amount on 11/12/2009. That the Complainant was handed over some letters. It is the case of the Complainant that the information which was required whether certified copies of the entire file containing all the required document as regard to the implementation and correspondence records the implementation of resolutions NO. 26 dated 16/07/1999 and the certified copies of all the details of notings in the file pertaining to Land Acquisition and that information was not furnished. Being aggrieved the Complainant filed this complaint on the various grounds as set out in the Complaint.

3. The Opponent resists the Complaint and the say is on record. It is the case of the Opponent that Suni-Jaamat-Ul-Muslameen had moved the proposal to the Collector, which was subsequently withdrawn on account of their own volition as informed by the Collector (South). That it has been informed by the Collector (S) vide letter dated 05/08/2009 that the proposal was put by Margao Municipal Council against which objection were received. These objection were forwarded to the Acquiring department that is Margao Municipal Council for comments. That inspite of repeated reminder the MMC failed to give their comments and as a result of which the said process of acquisition had lapsed. It is also the case of the Opponent that the Collectorate had made repeated reminder MMC who failed to give their comments and by efflux of time the said process of acquisition was lapsed. That in response to his representative the Dy. Collector Land Acquisition vide his letter dated 09/10/2009 has informed the Complainant to submit the complete proposal by identifying the land processed to be acquired for burial ground to the acquiring Department to the Land Acquisition Officer alongwith all required documents and only on scrutiny of proposal the same will be submitted to the Government for issuance of notification under section 4 of the Land Acquisition act. In short it is the case of the Opponent that the Revenue Secretary has not received any proposal from Collector (South) as yet. According to the Opponent case is to be disposed off.

4. Heard the arguments. The learned Adv. C. S. Mukherjee argued on behalf of the Complainant and the Opponent argued in person. The Complainant as well as his Adv. narrated in detail the facts of the case, about resolution and about starting the process. According to them the notification is existing and he has also seen the concerned file.

Adv. for the Complainant next submitted that the denial of information is malafide. According to the Opponent they did not have the said record and whatever record they had they furnished to the Complainant. The opponent submitted that they do not have the file which the Complainant thinks that it is existing. According to the Opponent the present Complaint does not lie

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the relief prayed for is to be granted or not.

6. It is seen that the Complainant vide his application dated 25/11/2009. sought certain information i.e. certified copies of entire file containing all the relevant documents as regards to the implementation and correspondence thereafter regarding the said resolution, and certified copies of details of all nothings on burial grounds pertaining to Land Acquisition. It is seen that by letter dated 04/12/2009 the Opponent called upon the Complainant to pay the amount and accordingly the amount was paid on 11/12/2010 and documents were furnished certain documents as well as notings. According to the Complainant the documents which were required were the certified copies of the entire file containing the documents as regards to the implementation and correspondence regarding the implementation of the resolution dated 16/07/1999 etc. From the reply of the Opponent as well as oral submissions it appears that they do not have the information sought.

I have perused the documents on record. It is seen Resolution No. 26 was in connection with the allotment of Communitade Land. It is further seen that Resolution was passed unanimously. This was in July 1999. Letter dated 05/08/2009 is from under Secretary Revenue to Collector of South Goa and Director, the Director of Municipal Administration Margao Goa. Letter dated 08/10/2009 is also a letter from under Secretary to the Collector of South Goa. Letter dated 05/08/2009 is from Collector South Goa to Under Secretary (Revenue) and this letter speaks of lapsing the process of acquisition. Letter dated 04/11/2009 is from Under Secretary Revenue, to Collector of South Goa in connection with Communitade Land and requesting to examine the same and take necessary action. Letter dated 09/10/2009 is from Dy. Collector (LA) South Goa Margao to the Complainant. This letter speaks of submitting the proposal. In short according to the Opponent the Revenue Secretary has not received any proposal from Collector (South) on the said issue. From the

reply dated 02/03/2010 (received on 03/03/2010) it appears that Revenue Department cannot have any role to play until and unless a concrete proposal is received for taking approval of Government for issuance of Notification under the Land Acquisition Act. It also transpires that whatever they had they have furnished to the Complainant. It appears from the above that information sought is not available with the Opponent.

6. It is to be noted here that under Section 2(f) "Information" means any material in any form, including records, documents, e-mails opinions, advices, press releases, circulars, orders, log books, 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 force.

It is pertinent to note that term 'record' for the purpose has been defined widely to include any document, manuscript, file etc. Under clause 2(j) 'Right to Information' means the right to information accessible under this Act which is held by or under control of any public authority and powers under the Act include the right to (a) inspect works documents, records of any public authority; (b) take notes extracts or certified copies of documents or records (c) and (d).....

7. From the above it transpires that Section 2(j) provides only information held by 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 in the records of the public authority concerned.

According to the Complainant such an information exists. The Opponent on his part is sure that the same is not with them. The Complainant has some documents/letters whereby some sort of activity in connection with land has taken place. In any case if public authority does not hold information or the information is non-est the public Authority cannot provide the same under the Act. Right to Information Act does not make it obligatory on the part of the public Authority to create information for the purpose of its dissemination.

I am aware that if the contention of the Public Authority that information cannot be furnished as the same is not traceable then it would be impossible to implement Right to

Information Act. However, it is also a fact that information that is not available cannot be supplied.. No doubt records are to be well maintained but papers missing from Government records is not an uncommon happening.

Apart from all this Complainant also knows about the same as can be seen from the papers produced about hearing before National Commission for minorities.

8. I have perused some of the rulings of Central Information Commission on the point:-

(i) In Shri B. S. Rajput V/s Council of Scientific & Industrial Research (CSIR) FNo.CIC/AT/A/2006-64 dated 15/09/2008) where respondent pointed out that all information barring one information (corresponding to Appellant's RTI request dated 13/06/2007) had been provided the Commission held that it has no reason to disbelieve the categorical assertion of Respondent and the document in question missing is more than 20 years old. This document being untraceable cannot be physically disclosed and resultantly there is no disclosure obligation on the Respondent.

(ii) In Shri B. Bandopdhjay V/s Commissioner of Central Excise Kolkata (Application No. CIC/AT/R/2006/00578 dated 14/02/2007) the Commission observed that such a plea should be exposed to rigorous scrutiny____presently there is nothing before the Commission that would enable it to critique or impeach the averments of the respondents_____ there is no option but to close the case.

(iii) In Shri Umakant K. Bokade V/s India Bureau of Mines (F.No.CIC/AT/A/2006/00046 dated 27/06/2006) it was observed that information that is not available cannot be supplied.

(iv) In Shri Shristi Kumar Choudhary V/s Ministry of Home Affairs North Block, New Delhi (Application No. CIC/AT/A/2007/00166 dated 14/04/2007) information in respect of petitions filed by the Appellant with the Home Minister in 1992-despite search document could not be located- the matter is of 1992 vintage and quite old- the Commission held that as the information is untraced, no obligation to disclose the same.

9. From the tenor of the Arguments of the Adv. for Complainant it is seen that complainant is pursuing a good cause. It also appears that he has some letters/documents. Something might have happened. However since information is untraceable this Commission cannot direct to produce the same.

10. In view of all the above, no intervention of this Commission is required and hence I pass the following order:-

O R D E R

“No further intervention of this Commission is required. The Complaint is disposed off.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 4th day of August, 2010.

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

