

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No. 13/SCIC/2010

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

.... Complainant

V/s

The Public Information Officer,
Supdt. of Survey & Land Records,
Panaji-Goa.

.... Opponent

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

1. The Complainant, Shri Abdul Matin Daud Carol, has filed the present Complaint praying that Respondent be directed to furnish the survey reports, survey description and correspondence to the office of District Collector between 16/7/1999 to 24/11/1999 by letter dated 24/11/2009 as to whether such resolution has been implemented or not i.e. the resolution No. 26 dated 16/07/1999 passed unanimously by Goa Assembly. And that Public Information Officer be punished for not furnishing the required information within time in accordance with law by imposing heavy fine.

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

That the Complainant has written various letters to different authorities a number of 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 Assembly vide resolution No. 26 about 12 years back i.e. on 16/07/1999. That the Complainant further states to see information about the outcome of the resolution, he addressed an application dated 24/11/2009 to the respondent/Opponent under section 6 of the Right to Information Act ('RTI' Act for short) in respect of acquiring and allotment of the Comunidade Land admeasuring an area of 199513 Sq.mts. surveyed under Chalta No. 52 of P.T. Sheet No. 228 situated behind St. Sebastian 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

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notified for acquisition. That the Complainant sought certain documents under RTI Act. That the Complainant received a letter dated 21/12/2009 stating that to furnish the notification number and date under which the land was proposed to be acquired at an early date in order to process his request. Aggrieved by the said letter the Complainant preferred the present Complaint on various grounds as set out in the Complaint.

3. The Opponent resists the Complaint and their say is on record. It is the case of the Opponent that Complainant's letter dated 24/11/2009 was transferred to their office under section 6(3) on 11/12/2009. That the Opponent's office inspite of sincere efforts could not locate the file as required by the Complainant and as such the Complainant was requested vide letter dated 21/12/2009 to furnish additional information such as notification No or date on which the said notification was issued. That this letter was well within time. It is further the case of the Opponent that he personally carried out detail enquiry in the Revenue Department wherein it was found that no such proposal of acquisition of land has been moved by District Collector as contended by the Complainant which is evident from the letter written to the Under Secretary, Revenue by District Collector South Goa Margao. It is also the case of the Opponent that the Complaint under section 18 of the Right to Information is not maintainable.

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

According to the Opponent they do not have the said records and that they sought details of notification but the same were not furnished instead Complaint is filed. According to him Complaint does not lie.

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

It is seen that applicant sought certain information vide his application dated 24/11/2009. It appears that a resolution was passed by the Goa Government in Goa Legislative Assembly in order to acquire and Allot Comunidade Land admeasuring 99513 Sq. mts. surveyed under Chalta No. 52 P.T. Sheet No. 228 located behind St. Sebastian Church, Aquem Alto Margao belonging to Comunidade of Margao. The said land was to be used as burial ground., cemetery and crematorium for Muslim, Catholics and Hindu Community from Margao. The documents sought were certified copies of entire file containing all the relevant documents such as survey reports, correspondence etc. It appears that the said application was transferred to the Opponent under section 6(3). The Opponent by letter dated 21/12/2009 requested the Complainant to furnish the notification number and date under which land was proposed to be acquired, in order to process the request. However, nothing was sent by the Complainant. This letter is within time. It is the case of the Opponent that inspite of sincere efforts they could not locate the file and that Opponent carried out detailed enquiry in Revenue Department where in it was found that no such proposal of acquisition was moved.

I have perused Exhibt A. this shows about the search was made. Exhibt B is the letter addressed to the Complainant Exhibt C is the letter form Collector South Goa to the under Secretary Revenue Department, Secretariat, Porvorim Goa. As per this letter proposal was moved but the same was withdrawn and that another proposal was put forth by Margao Municipal Council. As per the said letter the said process of acquisition lapsed. From the above it transpires 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 any information relating to any private body which can be assessed by a public authority under any other law for the time being in force.

Section 2(i) "Record" includes.....

- (a) any documents, manuscripts and file;
- (b) any microfilms, microfiche and facsimile copy of document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not) and
- (d) any other material produced by a Computer or any other device.

It is pertinent to note that the 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 is categorical that it is not with them. This Commission during hearing even offered the Complainant to take inspection if he wishes. In any case if public Authority does not hold information or the information cannot be accessed under section 2(f) or information is non-exist 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.

8. I have also perused some of the rulings of Central Information Commission on the point in question.

In Shri Umakant K.Bokade V/s Indian 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.

In Shri V. P. Goel V.s Income Tax Department (F. No. CIC/AT/A/2008/00455 dated 10/09/2008) where the Appellant Authority held that since the information requested is not maintained by the officers of public Authority in regular course of business it did not qualify to be information ‘held’ by the public authority in terms of section 2(j) of the Right to Information Act. The Commission observed that it is not possible to overrule the order of appellant authority who has very correctly decided that information which is not maintained or held by the public authority cannot be disclosed.

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In Shri B. S. Rajput V/s Council of Scientific & Industrial Research (CSIR) F. No. CIC/AT/A/2008/00464 dated 15/09/2008) it was observed that thus the document being untraceable cannot be physically disclosed and resultantly there is no disclosure obligation on the respondent.

No doubt Complainant is pursuing a good cause. However, in the factual matrix of this case this Commission cannot direct the Opponent to furnish information which is not there. The Complainant has some documents/letters which point out that some movement toward granting land had taken place. The Complainant knows the file No. also. This Commission directed Complainant to take inspection once again. However the file could not be traced. The information as requested by the Complainant is untraceable and/or “non-existent.”

9. Regarding maintainability of the Complaint. In the case before me information is sought and the opponent seeks clarification within prescribed period, however, instead of clarifying filed the present complaint. Section 18(1) (a) to g) lays down when the Complaint may be filed. However I need not touch this aspect in view of the above.

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

“ 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

