

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 58/SCIC/2010

Shri Joao C. Pereira,
H.No. 40, Acsona, Utorda,
Majorda,
Salcete-Goa.

..... Appellant.

V/s.

1) Public Information Officer,
Superintendent of Survey & Land Records,
Margao - Goa.

..... Respondent No.1.

2) The First Appellate Authority,
Director of Settlement & Land Records,
Panaji-Goa.

..... Respondent No.2.

Appellant in person.

Respondent No.1 present.

Respondent No. 2 absent.

ORDER
(23-07-2010)

The Appellant, Shri Joao C. Pereira has preferred this appeal praying that the order of the Respondent No. 2 dated 22/02/2010 be quashed and cancelled and set aside; that Respondent No. 2's reply dated 22/01/2010 addressed to the Appellant to be quashed; that Respondent No. 1 be directed to furnish the correct information to the Appellant's queries (a) and (b) to the application dated 11/11/2009 and for initiating disciplinary proceeding against Respondent No. 1 and 2.

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

That the Appellant, vide his application dated 11/11/2009 sought certain information from the Respondent No. 1 under Right to Information Act ('RTI' Act for short). That the Respondent No. 1 failed to reply nor furnish the information within the stipulated period of 30 days as per

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section 7(1) of the Act. Being not satisfied, the Appellant preferred First Appeal before the Respondent No. 2 on 18/12/2009. After filing the Appeal the Appellant received reply from the Respondent No. 1 on 21/12/2009 by ordinary post vide letter dated 10/12/2009 furnishing wrong and incorrect information to the Appellant. That the Respondent No. 2 without hearing the Appellant First Appeal passed an order on 28/12/2009 disposing the First Appeal without giving an opportunity nor hearing the Appellant to present the case which is illegal and bad in law. It is the case of the Appellant that thereafter he once again filed the First Appeal before Respondent No. 2 on 02/01/2010 against the Respondent NO. 1 and after hearing the Respondent No. 2 set aside the wrong reply on 22/01/2010 and directed Respondent No. 1 to furnish fresh reply. That Respondent No. 1 once again furnished wrong and incorrect false information to the Appellant in respect of queries (a) and (b) vide letter dated 22/01/2010. Being aggrieved, the Appellant again filed the appeal before the Respondent No. 2. That the Respondent No. 2 never bother to hear the First Appeal of the Appellant and instead arbitrarily passed the order dated 22/02/2010 dismissed the First Appeal.

Being aggrieved by the order of the Respondent No. 2 and the reply of the Respondent No. 1 the Appellant has preferred this Appeal on various grounds as set out in the memo of appeal.

3. The Respondent resists the Appeal and the say of Respondent No. 1 is on record. It is the case of the Respondent No. 1 that the Appellant sought certain information through a questionnaire format. That by letter dated 10/12/2009 the Respondent No. 1 furnished the information. That the Applicant preferred the First Appeal complaining that he has not received the said information within 30 days as required. That the First Appellate Authority directed the Respondent No. 1 to send copy of the said letter a fresh within 3 days which was accordingly done. It is the case of the Respondent No. 1 that being not satisfied with the information furnished the Appellant preferred the First Appeal and the First Appellate Authority directed the Respondent No. 1 to furnish fresh reply. That Appellant again preferred First Appeal and by order dated 22/02/2010 the Appeal was dismissed. It is further the case of the Respondent No. 1 that the information sought is dimension and area of Survey No. 53/6 of Village Utorda, Margao . That this information is not readily available with the records maintained by the Public Authority. Hence the same need to be created. As the Public Authority are only to supply in any form as it exist that the Appellant was informed about the same vide letter dated 22/01/2010 wherein a decision of Central Information Commission was relied. That the Respondent No. 1 also referred to the circular in respect of order of the Commission.

4. Heard the arguments. The Appellant argued in person. Respondent also argued in person.

The Appellant referred in detail to the facts of the case. According to him reply was not given within stipulated time of 30 days so he filed appeal. He narrated in detail the circumstances under which the present appeal was filed. He also referred to the material on record. According to him information sought is covered by section 2(f). He submitted that PIO ought to have furnished the said information.

The Respondent No. 1 submitted the Survey plan I and XIV were drawn by the Collector and is with the Collector and that they did not have anything in connection with I and XIV. Next referring to the plan he submitted that he does not have any measurement but the plan has a scale. According to the Respondent No. 1 whatever information was with him was furnished and the question of giving in measurement does not arise.

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 is to be granted or not.

It is seen that the Appellant by his application dated 11/02/2009 sought the information as under:-

- (a) Give me the length, breadth and area of public pathway, which is shown on the survey plan of Survey No. 53/6.

- (b) What are the dimensions of Survey No. 53/6 i.e. length, breadth and area after excluding the dimension of the public pathway existing and shown in the plan of Survey Nos.53/6.
- (c) Whether the blue colour shown in the plan or western side of Survey No.53/6 is the water of Arabian Sea or the Public Beach.

By reply dated 10/12/2009, the Opponent furnished the reply as under:-

- (1) As para I not available.
- (2) As para II not available.
- (3) As para III the blue colour shown in the plan is Arabian sea.

It is not in dispute that First Appeal was filed and that Respondent No. 1 was directed by First Appellate Authority, vide order dated 28/12/2009 to send copy of the said letter afresh within 3 days which was accordingly done and fresh copy was sent to the Appellant on 29/12/2009. Being not satisfied with the said reply, the Appellant preferred the Appeal and First Appellate Authority directed the Respondent No. 1 to furnish proper reply as regards to questions at serial No. (a) and (b) of the application dated 11/11/2009. The Respondent No. 1 accordingly furnished the fresh reply vide letter dated 22/01/2010 whereby it is informed that as per the records available in the custody of Public Information Officer no measurements are recorded

in the plans maintained by their office of the said survey number. It is seen that Appellant again preferred an appeal and the same was dismissed by order dated 22/02/2010.

6. The grievance of the Appellant as per the grounds set out in the Complaint appear to be that refusal by Respondent No. 1 to submit correct information to the Appellant is contrary to 2 (f) and 2(i)(ii) of the Act and its very purpose; that information sought is part of the record of Respondents office which has to be only extracted from the survey plan of survey 53/6 by the Respondent No. 1 as per the scale mentioned on the survey plan which Respondent No. 1 failed to do so.

It would not be out of place to mention about the definition of information. 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 Public Authority under any other law for the time being in force.

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

- (a) any document, manuscripts and files.
- (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.

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It is pertinent to note here that the term 'record' for the purpose has been defined widely to include any document, manuscript file etc. under clause 2(i) "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) print outs, diskettes, floppies, tapes, video cassettes or in another electronic mode or through print outs whether such information is stored in a computer or in any other device.

A combine reading of section 2(f), 2(i) and 2(j) of the Right to Information act would show that a citizen is entitled for disclosure of information which is in material form with the public authority and the "information" and the right of the citizen to seek does not include opinion, calculation and explanation etc.

7. The Appellant has sought information regarding length, breadth area, dimension of the public pathway existing and shown in the plan of survey No. 53/6. It is now to be seen whether such a request can be granted. In view of what is mentioned above the information in the form held is to be provided. Public Information Officer is not required to create or compile the information on the demand of a requester merely because, some one has asked for it. It should be provided in the form in which it exists.

According to the Appellant information sought is to be extracted from the survey plan of survey No.53/6 by the Respondent No.1 as per the scale mentioned on the said plan. I have perused the said plan on the record. According to the Opponent they do not have measurements but the plan has scale. It is seen that if measurements done than it would amount to creating information which Public Information Officer cannot do Right to Information Act does not cast on a Public Information Officer an obligation to do this exercise on the basis of a plan. It appears that appellant wants this measurements from the Respondent No.1 and that the Respondent No.1 to do this work for him and handover the same to him. To my mind this does not fall within the ambit of Right to Information Act. Once the document is with the information seeker he cannot ask the public authority questions about who's and why's of those documents.

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

(i) In B. N. Veerasha V/s Canara Bank (Appeal No. 14/IC/(A)2006 F.No. CIC/MA/A/2006/0002 Dated 27/03/2006) the appellant requested certain information and the same was sought in a C.D. in electronic media. The Appellant has alleged that C.P.I.O. has supplied incomplete, misleading and incorrect information. The First Appellate Authority dismissed the appeal. The C.I.C. observed as under: -

“ The information is to be provided in the form in which it exists with the public authority and that without disproportionately diverting the resources of the information provider. The Information sought by the Appellant is available in great details in an Annual Reports, which have been given to the Appellant. It is not available in electronic form; it does not have to be created for the Appellant. There is, thus no question of denial of information to him.....”

(ii) In Ms. S. Lilawati v/s JIPMER, Pondicherry (Appeal No.39/ICPB/2009 Dt. 29-06/2009) it was observed that the Public Authority is bound to furnish only the information as is available with it.

(iii) In Rajinder J. Singh V/s All India Institute of Medical Sciences (Appeal No.272/ICPB/2006 F.No.PBA/06/272 Dated 10/01/2007) it was observed that in terms of Right to Information Act a citizen is entitled to seek disclosure of information that is available in a material form with a public authority that is, the information is available in any file or document and the like.

In short Public Information Officer is expected to provide the information available with him as it is. It is not obligatory on the part of the Public Information Officer to furnish non-existent information.

9. It is one of the ground in the memo of appeal that order of Chief Information Commissioner is not binding on this Commission. I do agree with this contention. However, the said orders though not binding have a persuasive value.

10. It is the contention of the Opponent that they do not have the said information. Public Information Officer is not obligated to furnish non-existent information.

11. It is seen that information was sought by application dated 11/11/2009. Reply sent is dated 10/12/2009. Appellant claims of having received the same on 21/12/2009. It is seen that the same was sent by ordinary post. In the factual matrix of this case I do not think that the same is material.

12. It is also contended that no hearing was given to the Appellant by First Appellate Authority. Irrespective of the provisions of the Act the First Appellate Authority must give a chance to the Appellant to present his case. Hope First Appellate Authority in future bear this in mind.

13. In view of all the above I do not find any infirmity in the order passed by the First Appellate Authority. Hence I pass the following order:-

ORDER

The Appeal is hereby dismissed.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 23rd July, 2010.

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

