

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No. 14/SCIC/2010

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

....

Complainant

V/s

1) The Public Information Officer,
Town & Country Planning Department,
Osia Complex,
Margao-Goa.

....

Opponent No.1

2) Public Information Officer/Dy Collector (L.A),
South Goa,
Margao-Goa.

....

Opponent No. 2

Adv. Mukherjee for Complainant.

Opponent No. in person.

Adv. Harsha Naik for Opponent No. 2.

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

1. The Complainant, Shri Abdul Matin Daud Carol, has filed the present Complaint praying that Opponent be directed to furnish all the information as per letter dated 23/11/2009; that the Opponent be punished for not furnishing the required information within time though having the same and that penal action be taken.

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

That the Complainant has written various letters to different authorities number of time for last fifteen 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 the resolution to that effect was also taken in the Goa Assembly vide resolution No. 26 on 16/07/1999. That in order to seek information about the outcome of the resolution Complainant addressed an application dated 23/11/2009 to the Respondent/Opponent under section 6 of Right to Information Act ('RTI' for short) in respect of acquiring of Comunidade land admeasuring an

...2/-

area 99513 sq.mts. surveyed under Chalta No. 52 of PT Sheet No. 228 situated behind St. Sebastiao Church, Aquem Alto, Margao to be used as burial ground, Cemetery and Crematorium for Muslims, Catholics and Hindu community from Margao which was notified for acquisition in the resolution itself. That the Complainant sought certain documents under Right to Information Act. It is the case of the Complainant that he received copy of the letter to the effect that as application has been transferred to another PIO of Collector (South) Goa by letter dated 08/12/2009 without giving any details. That the Public Information Officer of the Collector South-Goa sent letter dated 07/01/2010 stating that the file pertaining to the acquisition of the land for the purpose of Kabrastan to be used as burial ground is not available in the records. Aggrieved by the same the Complainant filed the present Complaint on various grounds which are set out in the complaint.

3. Opponent resists the Complaint and their say is on record. It is the case of the Opponent that the present complaint is not maintainable as the same is infructuous. That the present Complaint is hit by the principle of Res Judicata. That no first Appeal has been filed and that no provision of law has been cited. That the Opponent/Respondent No. 1 transferred the application dated 23/11/2009 to the office of Collector South-Goa and accordingly Respondent No. 2 issued a letter dated 7/01/2010 to the Complainant thereby stating that information sought by the Complainant is not available in the record. That the grounds mentioned in the Complaint are not correct. According to the Opponent/Respondent Complaint is liable to be dismissed.

4. Heard the arguments. The learned Adv. S. Mukharjee argued on the behalf of the Complainant and Adv. Harsha Naik argued on the behalf of the Opponent/Respondent. The Adv. for the Complainant narrated in detail the facts of the case, about resolution passed and also

about initiating the process. According to him the notification is existing and the Complainant has also seen the concerned file. According to the Opponent they do not have the said record.

According to the Opponent the 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 is to be granted or not.

It is seen that the applicant, vide his application dated 23/11/2009 sought certain information under Right to Information Act from the Public Information Officer, Town and Country Planning Department/Opponent No. 1. By letter dated 08/12/2009 the Opponent No. 1 transferred the same under section 6(3) of Right to Information Act to the Collector Office of the Collectorate South Goa as the information asked by the applicant pertains to the office of District Collector South Goa. By letter dated 07/01/2010 the Dy. Collector (L.A.) South Goa Margao informed the Complainant that N.O.C's/Correspondence or relevant documents asked under Right to Information are not available in their records. This reply is sent within time considering the fact that they received the application by letter dated 08/12/2009.

I have also perused the documents on record i.e. papers in connection with resolution no. 26, application dated 23/11/2009 and also letter date 08/12/2009 and 07/01/2010.

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 an 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.

8. According to the complainant such an information exists. The Opponents are categorical that it is not with them. This Commission during hearing requested the Complainant to take inspection of records. In any case if public Authority does not hold information or the information cannot be accessed under section 2(f) or information is non-existent 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.

9. I have perused some of the rulings of central Information Commission as well as State Information Commission. On this aspect.

The rule of law now crystallised by the various rulings of the Central Information Commission as well as State Information Commissions is that information/document that is not available cannot be supplied. The Right to Information Act can be involved only for access to permissible information.

10. It appears that the subject matter is very close to the Complainant and he is pursuing a good cause for the benefit of all. However, in the factual backdrop of this case this commission cannot direct the Opponent to furnish the Information which is not there. The Complainant is cocksure that it is there however under the Right to Information one has to go as per records. And records show that it is not there. Therefore, non-existing information cannot be furnished.

11. In view of 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

