

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 587/SIC/2010

Babasaheb Krishnarao Rane,
Wadawal, Latambarse,
Bicholim – Goa

... Complainant.

V/s

P. J. Kamat,
Superintending Engineer,
Public Information Officer,
Office of the Goa Tillari Irrigation Development Corporation,
P.O. Tivim Industrial Estate,
Bardez – Goa

... Opponent.

Adv. Shri S. Patkar for Complainant.
Opponent in person.

O R D E R
(22.03.2011)

1. The Complainant, Babasaheb Krishnarao Rane, has filed the present Complaint praying that the Respondent may be directed to provide the Complainant the information sought by him vide application dated 13.07.2010; that penalty be imposed as provided under the Act and that disciplinary action may be initiated against the Respondent.

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

That the Complainant, vide an application dated 13.07.2010 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Special Land Acquisition Officer (North), Irrigation Department, at Karaswada, Colvale, Bardez-Goa. That the said application is replied by Superintendent Engineer and Public Information Officer (PIO) Shri P. J. Kamat by reply dated 29.07.2010. That the information sought by the Appellant was not provided to him except supplying copies of three applications and a copy of the court decree in

S.C.S. No. 49/1985. Being aggrieved by the said reply the Complainant preferred an Appeal before the Managing Director, Goa Tillari Irrigation Development Corporation/First Appellate Authority (FAA). By Order dated 15.09.2010 the Appeal was disposed off thereby directing the Respondent to furnish to the Complainant the required details after correcting the admitted "clerical error" by Respondent No. 2 committed in the Award dated 30.08.1998. It is the case of the Complainant that the Respondent has failed to furnish the same till this date. That even after the Order of Appellate Authority the Respondent mischievously informed by letter dated 20.09.2010 that the information sought under the RTI may be obtained from Executive Engineer, Works Division I, Water Resources Department, as PIO of Water Resources Department and that the file pertaining to the above issue will be processed from the Special Land Acquisition Officer (N), Goa Tillari Irrigation Development Corporation, Karaswada to Executive Engineer, W.D.I. That thereafter one Dilip S. Chavan, Special Land Acquisition Officer (N) and PIO (WRD) mischievously informed through his letter dated 27.09.2010 that the information sought under RTI Act does not fall within the purview of any of the provisions under RTI Act. That this is absolutely in contravention of the directions issued by the Appellate Authority. In short, it is the case of the Complainant that the Respondent has refused to obey the Order of the First Appellate Authority with malafide intention. Being aggrieved the Complainant has filed the present Complaint on various grounds as mentioned in the Complaint.

3. The Opponent/Respondent resist the Complaint and the reply dated 31.01.2010 is on record. In short, it is the case of the Opponent that the reply to the application dated 13.07.2010 sought under RTI by Babasaheb K. Rane was sent to the applicant by Special Land Acquisition Officer (N) and PIO (WRD) vide his letter dated 27.09.2010. That on examination of the application of the applicant for issue of certain documents mentioned in the said application, it was noticed that the matter does not pertain to GTIDC and since it was felt that it may be pertaining to

W.R.D., it was referred to Executive Engineer, W.D- I, Water Resources Department as PIO of Water Resources Department by letter dated 20.09.2010.

3. Heard the arguments. Learned Adv. Shri P.K. Patkar argued on behalf of Complainant and the Opponent argued in person.

Adv. Shri Patkar referred to the application dated 13.07.2010. He next referred to reply dated 29.07.2010. According to him information sought was not furnished and that some documents were given. He also referred to the letter dated 20.09.2010. He next referred to the Appeal preferred before FAA and submitted that FAA directed to furnish the information. He submitted that Respondent has malafidely not followed the Order passed by the FAA and that knowingly gave incorrect, incomplete and misleading information to the Complainant. He also submitted that no answers have been furnished to the question raised by the Complainant in clauses (a) and (b) nothing of the application. According to him the Act of Respondent is arbitrary and illegal. He also submitted that there is delay in complying the Order of FAA and that penalty be imposed.

The Respondent also referred to the facts of the case in detail. According to him whatever information available was furnished. He also submitted how application was sent and that the matter did not pertain to GTIDC and since it was felt that the same pertains to WRD it was referred to W.D.I, Water Resources Department. He also submitted that the information that is sought cannot be furnished.

4. 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 reliefs prayed are to be granted or not. It is seen that the Complainant vide application dated 13.07.2009 sought certain information from the Special Land

Acquisition Officer (N), Irrigation Department. It is seen that the same was received in the office of Special Land Acquisition Officer (N), Goa Tillari Irrigation Development Corporation on same day. The information pertaining to some land acquisition for M.I. Tank, Amthane and certain notification as mentioned in the same. The information sought at para (a) is that with reference to para 26 on page 11 in sub-para No. 3 of page No. 12 of the Award, some observations were made and the information sought was to inform how and why this error has taken place and kindly correct the same and at point (b) in connection with the said Award it was mentioned that some error has taken place while writing the Award and the information was sought to inform how and why this error has taken place and also to correct the same. It is seen that by letter dated 20.09.2010 the Opponent informed the Complainant that the subject matter of land acquisition of M.I. Tank at Amthane is pertaining to Water Resources Department and that the information may be obtained from Executive Engineer, Works Division I, Water Resources Department as PIO of Water Resources Department. The copy of the letter was also sent to Executive Engineer, Works Division I, WRD, Patto, Panaji and to the Special Land Acquisition Officer (N), GTIDC, Karaswada for information. By letter dated 27.09.2010 the Special Land Acquisition Officer (N)/PIO (Water Resources Department) informed the Complainant that the information sought by him does not come under the purview of any of the provisions under the RTI Act. However, the copies of the documents of application dated 28.11.1996, 02.12.1996 and 05.12.1996 be collected after paying Rs. 16/-. It appears that the Complainant being not satisfied preferred the Appeal before the Managing Director, GTIDC/FAA. By Order dated 15.09.2010 the FAA directed the Respondent No. 1 to furnish the required details after correcting the admitted clerical error by the Respondent No. 2 committed in the Award No. 7-23-95-SLAO dated 30.08.1998 as asked by the Appellant in his letter dated 13/7/2010 within a time frame of fifteen days. The letter dated 27.09.2010 mentioned by me hereinabove appears to be in pursuance of this Order.

5. It would not be out of place to mention here about the definition of information. Under section 2(f) "information" means 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 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. In an old case (AIR 1957 Punjab 226) the Punjab High Court explained 'information' as synonymous with knowledge or awareness in contradistinction to apprehension, suspension or misgiving.

Section 2(j) "record" includes -

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a 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 to be noted here that the term "record" for the purpose has been defined widely to include any documents, manuscript, file, etc. under clause 2(j) under "The 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) take certified samples of material and (d) obtain information of printouts, diskettes, folders, tapes, video cassettes or any other electronic mode or through printouts where such information is stored in a computer or in any other device.

6. Coming to the case at hand the Appellant sought information as under:

1. Notification No. 22/47/95-RD dated 06/11/95 published on pages 316-317 of series II, no.20 of Govt. gazette dated 16/08/96.
2. Notification no. 22/47/95 RD dated 02/08/96 published on pages 233-234 of series II no.20 of govt. gazette dated 16/08/96.
3. Award no. 7-23-95 SLAO dated 13/08/98.

Sir,

With reference to the above award bearing no. 7-23-95 SLAO dated 13/08/98 following information be kindly supplied urgently;

- a. In the said award in the Para no.26 on page 11 in sub para no.3 on page no.12 you have stated as under, "Shri. Babasaheb Alias Krishnarao Rane Sardesai and others by their joint application dated 05/12/95 and 28/11/96 have stated that the said survey number is partly owned and enjoyed by them. They further stated that by way of decree passed in special civil suit no.49/1985 they are entitled for 45% of the compensation of the above plot".

It is respectfully submitted that I my self alongwith others have never filed any application dated 05/12/95. We have filed application dated 02/12/96 and 28/11/96 so if there is any application dated 05/12/95 filed by us kindly issue me the certified copy of the same, similarly kindly issue certified copies of the applications dated 02/12/96 and 28/11/96 filed by us. It is further submitted that in Para 2 of the application dated 28/11/96 by oversight the word partly is added. The said survey No. 752/0 is in our exclusive possession and enjoyment.

It is further submitted that in those applications dated 02/12/96 and 28/11/96 we have nowhere stated that, ". They further stated that by way of decree passed in special civil suit no. 49/1985 they are entitled for 45% of the compensation of the above plot".

It seems that this error has taken place while writing the award. You therefore requested to kindly inform me how and why this error has taken place and kindly correct the same.

b. In the said award again in the Para no. 27 on page 11 in sub Para no.4 you have stated as under, "Shri. Babasaheb alias Baban Krishnarao Rane Sardesai and others by their joint application dated 05/12/95 and 28/11/96 have stated that the said survey number is partly owned and enjoyed by them. They further stated that by way of decree passed in the special civil suit no. 49/1985, they are entitled for 45% of the compensation of the above plot."

It is respectfully submitted that I my self alongwith others have never filed application dated 05/12/95. We have filed dated 02/12/96 and 28/12/96 so if there is any application dated 05/12/95 filed by us kindly issue me the certified copies of the same similarly kindly issue me certified copies of the application dated 02/12/96 and 28/11/96 filed by us. It is further submitted that no where we have said in either of the application that the said survey no 756 is (partly) enjoyed by us.

It is further submitted that in those applications dated 02/12/96 and 28/11/96 we have no where stated that, "by way of decree passed in the special civil suit no. 49/1985, they are entitled for 45% of the compensation of the above plot."

It seems that this error has taken place while writing the award.

You are therefore requested to kindly inform me how and why this error has taken place and kindly correct the same.

7. It is to be noted here that section 2(j) provides only information held by or under the control of any public authority. It does not mean that an information seeker can solicit opinion from the PIO of a Public authority. The rule of law now crystallized by the various rulings of Chief Information Commissioner as well as State Information Commissioner is that the information held is to be provided and Commission's jurisdiction can go no further than only directing that information in the form held be provided. In the case before me, First Appellate Authority directed to furnish information after correcting the admitted clerical error in the said award. It is pertinent to note that Public Information Officer not required to collect, compile or create information for the information seeker but he is expected to provide the information available in material form.

Again it is held (as decided by CIC 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 answers to questions with prefixes such as why, what, when and whether.

In Shri Vibhor Dileep Baria V/s Central Excise and Custom Nashik (Appeal No.CIC/AT/A/2006/00588 dated 30/11/2006) it is observed in para 11 and 14 as under:-

"11. Right to Information Act confers on all citizens 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 or under the control of any public authority. If the public authority does not hold information or the information cannot be

accessed by it or under section 2 (f) or if the information is non-existent, 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.”

“14. Thus information would mean any material in existence and apparently it cannot mean and include something that is not in existence or to be created. An “opinion” or an “advice” if it is a part of the record is “information” but one cannot seek from a 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 enquiry cannot be treated as available information. Likewise the data maintained in any electronic form is “information” and the whole of such data or a part thereof can be made available to an applicant by a public Authority under RTI Act. But making an analysis or data so collected cannot be expected to be done by the C.P.I.O. under RTI Act. On the same analogy, answering a question, preferring advice or making suggestions to an applicant is clearly beyond the purview of the Right to Information Act.”

8. All this is now purely academic. The First Appellate Authority has passed the Order. The same is not challenged. Therefore, the same stands.

9. The present Complaint is for a direction to comply with the said Order. Since the Order stands the same will have to be complied with by the Opponent. The PIO has indeed not complied the said order of the FAA. I am aware that by nature of the Order passed by FAA may not be complied by PIO alone and therefore FAA to provide necessary assistance and ensure that the Order is complied with.

10. Advocate for the Complainant contends that there is delay. The Order is dated 15.09.2010 and so far the same is not complied with. Apparently there is some delay in complying the Order. However, the Public Information Officer/Opponent should be given an opportunity to explain the same in the factual matrix of this case.

11. In view of the above, I pass the following order:-

ORDER

The Complaint is allowed. The Opponent is hereby directed to provide the information sought by the Complainant vide application dated 13.09.2010 and as directed by the FAA within twenty days from the receipt of the Order.

Issue notice under section 20(1) of the RTI Act, 2005 to the Opponent/PIO to show cause why penalty action should not be taken against him for causing delay in furnishing information. The explanation, if any, should reach the Commission on 29.04.2011. Public Information Officer/Opponent shall appear for hearing.

Further inquiry posted on 29.04.2011 at 10:30a.m.

A copy of the Order be sent to the First Appellate Authority.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 22nd day of March, 2011.

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