

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 262/SCIC/2010

Shri I. S. Raju,
H. No. 706/A, Acsona,
Pendolpem, Benaulim,
Salcete - 400 081

.... Appellant

V/s.

1) Public Information Officer,
Department of Information & Publicity,
Government of Goa, Udyog Bhavan,
3rd Floor, Cansaulim - Goa

... Respondent No. 1.

2) Public Information Officer,
Addl. District Magistrate,
Collectorate Building, South Goa,
Margao - Goa

... Respondent No. 2.

3) First Appellate Authority,
Director,
Information & Publicity Department,
Panaji - Goa

... Respondent No. 3.

Appellant in person.

Shri Agnelo, representative of Respondent No. 2.

J U D G M E N T **(21.04.2011)**

1. The Appellant, Shri I.S.Raju has filed the present appeal praying that the information be furnished.

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

That the Appellant, vide letter dated 13/23-8-2010, sought certain information under Right to Information Act, ('R.T.I. Act' for short) from the PIO, Department of Information and Publicity, Panaji-Goa. That by reply dated 26/08/2010 the Information Officer P.I.O. addressed to the P.I.O., Office of the Collector (South), Collectorate Bldg., Margao-Goa transferring his R.T.I. Application to him and asking him to provide the information sought. Being not satisfied the Appellant filed an appeal before the First Appellate Authority.

Being aggrieved the Appellant has preferred the present Appeal.

3. The case of the Respondent No.2 is fully set out in the reply, which is on record. In short it is the case of the Respondent No. 2 that the Application of the appellant dated 23/08/2010 was transferred to the office of Respondent No.2 under section 6(3) of the R.T.I. Act and the same was received on 1/9/2010. That vide reply dated 15/09/2010 the Respondent No.2 informed the appellant and also requested to inspect the records. That the Official Gazette is published by Department of Printing and Stationary, Government of Goa and the Circular, if any, issued under the Tree Act are issued by the Department of Forest, Government of Goa. That despite of this fact they called the appellant so as to provide information by asking for the same from the concerned Department. That the Appellant did not visit their office. That the appellant did not join the Respondent No.2 as party in First Appeal. That the First Appeal was not filed before proper forum. It is also the case of the Respondent No. 2 that the information has been procured from other Department and issued to the Appellant with reply dated 1/2/2011.

4. Heard the arguments. The Appellant has filed written submission which are on record.

5. I have carefully gone through the records of the case and also considered the written submissions of the appellant which are on record.

It is seen that the appellant, vide application dated 13/23-8-2010 sought certain information from the P.I.O., Department of Information & Publicity, Panaji who transferred the same to the Respondent No.2 under section 6(3) by letter dated 26-8-2010. By letter dated 15-09-2010, the Respondent No.2 informed about information etc. and also mentioned about inspection. Being not satisfied the Appellant preferred an appeal before Directorate of Information & Publicity.

6. 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.

Under section 2(i) "record" includes:-

- (a) any documents, 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 (j) of section 2 "Right to Information" means the right to information accessible under this Act which is held by or under control of the public authority and powers under the Act includes 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.

7. Coming to the case at hand the appellant sought information as under:-

1. The appellant refers to a booklet dated June 06, 2009 on the front cover with C.M's picture published by Department of Information and Publicity at page 9 point 5 which states "Dy. Collectors are now empowered to cut

trees which pose a threat to human life if required by spending money from their fund. (Copy enclosed).

2. It is requested that with reference to para 1 above I may kindly be informed the Official Gazette Government of Goa Series No. and date which states "Dy. Collectors are now empowered to cut trees which pose a threat to human life, if required by spending money from their fund" and also in your reply a copy of the extract of the same may be sent to me. I may also be kindly issued with a copy of the circular on the same subject i.e.....
3. Further I am also be kindly informed whether the same is available at Government Margao Printing Department at Comunidade building South Goa. If available I may kindly be given the gazette No. and date and Circular no. and date to enable me to obtain the same from Margao itself."

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 seek solicit opinion from the P.I.O. of a public authority. The rule of law now crystallized by the various rulings of Central Information Commission as well as State Information Commission is that the information held is to be provided and the Commission's jurisdiction can go no further than only directing that information in the form held be provided. It is pertinent to note that Public Information Officer is not required to collect, compile or create information for the information seeker but he is expected to provide the information available in the material form.

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. It is seen that P.I.O./Department of Information & Publicity transferred the application of the appellant to P.I.O. Addl. District Magistrate, South Goa. I have perused the reply dated 15/09/2010.

As per the same it appears that information was not with Respondent No.2 It is seen that Respondent No. 2 called the Appellant for inspection .

The Appellant in his written submission attacks this part. According to him if information was not there why he be called for information. I do agree with this contention. However sometimes inspection is offered so that information seeker is satisfied. In any case if party does not want inspection it should not be thrust on him.

Another aspect is that in rely dated 7/2/2011, it is mentioned that information sought by the Appellant is procured from other department and issued to him. Though this is alludable under R.T.I Act, whatever information is available is to be furnished. However P.I.O. has procured information for the Appellant.

In Shri Rajinder J. Singh V/s. All India Institute of Medical Sciences (Appeal No.272/ICPB/206 F.No.PBA/06/272 dated 10/01/2007), it is held in terms of the provisions of R.T.I. Act, a citizen is entitled to seek disclosure of information that is available in material form with Public Authority, that is the information is available in any file or documents and the like.

9. In the instant case P.I.O. has not informed about First Appellate Authority. Under R.T.I. Act it is obligatory to do so. Appellant preferred Appeal before Director of Information and Technology/F.A.A., however, he also did not direct the appellant to a proper forum. May be due to non-appreciation of the provisions of the R.T.I. Act. Hope the P.I.O. and F.A.A. shall bear the same in mind in future.

10. Appellant contends that there is 158 days of delay in furnishing information. It is seen that application is dated 23/08/2010. The

same was transferred by letter dated 26/08/2010 The Respondent no.2 sent reply by letter dated 15/9/2010. It is seen from the reply that the information sought by the Appellant is procured from other Department and issued to him which is enclosed with reply dated 1/2/2011. The point that arises is whether such a delay could be condoned or not. In S. N. Roy v/s. Life Insurance Corporation of India (F. No. CIC/AT/C/2009/000417 decided on 31/07/2009) it was observed as under:-

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.....
There was effort made by the respondents especially after Appellant filed his second appeal to locate the information corresponding to complainant’s R.T.I. queries. There has, no doubt, been some delay in providing the information but I am not holding it against the respondents in view of the effort made by them, howsoever late, to find the source of the information and give it to the Appellant.
I, therefore, do not propose to impose any penalty on the (P.I.O.) or draw any proceeding against the Appellate Authority.”

Considering the nature of information sought and in the factual matrix of this case I am of the opinion that the delay is to be condoned. P.I.O. should bear in mind that where the information is not held by the Public Authority, Appellant will require to be informed against the specific question asking for such information.

11. The P.I.O. has to inform about Appellate Forum. In any case since information is furnished no intervention of this Commission is required. Hence I pass the following order:-

ORDER

No intervention of this Commission is required as the information is already furnished. The appeal is disposed off.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 21st day of April, 2011.

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

