

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

**Appeal No. 33/SCIC/2011**

Shri Lindo Jeronimo Furtado,  
H. No. 51, Copelwaddo,  
Sernabatim,  
Salcete – Goa

... Appellant.

V/s.

- |   |                       |
|---|-----------------------|
| 1) Additional Collector –I,<br>First Appellate Authority,<br>Office of the Collector,<br><u>Salcete – Goa</u> | ... Respondent No. 1. |
| 2) Public Information Officer,<br>Office of the Dy. Collector & SDO,<br><u>Margao – Goa</u>                   | ... Respondent No. 2. |
| 3) Mamlatdar of Salcete,<br><u>Margao – Goa</u>   | ... Respondent No. 3. |

Shri Nevil Furtado, representative of Appellant.

Respondent No. 2 in person.

Shri Haji Ali, representative of Respondent No. 3.

**ORDER**  
**(26.08.2011)**

1. The Appellant, Shri Lindo Jeronimo Furtado has filed the present Appeal praying to allow the Appeal and to quash and set aside the Order dated 19.10.2010 passed by the First Appellate Authority thereby directing the Respondent No. 2 and Respondent No. 3 to furnish certified copies of the documents sought under R.T.I. Act' on the application dated 30.08.2010; for an order directing Respondent no. 2 and 3 to pay to the Appellant a sum of Rs.100/- for each day delay from the date of application i.e. 30.10.2010 till the Appellant receives the said information sought for by the Appellant in terms of the application dated 30.08.2010; for an order initiating disciplinary proceedings against Respondent No. 2 and Respondent No. 3 as provided in section 20(2) of the RTI Act for malafidelity denying/obstructing the information sought for by the Appellant.

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

That the appellant, vide an application dated 30.08.2010 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Respondent No. 2 and Respondent No. 3. That on 28.09.2010 the Respondent No. 2 addressed a letter and subject – Information sought under RTI Act asking him to attend his office to indentify and collect the documents required. That the said letter was received by the Appellant on 06.10.2010. It is the case of the Appellant that the letter dated 28.09.2010 by Respondent No. 2 is in respect of the application moved by the Appellant dated 31.08.2010 wherein the Appellant had sought inspection of documents. That the said letter dated 28.09.2010 does not pertain to the information sought under an application dated 30.08.2010. That Respondent No. 2 as well as Respondent No. 3 did not furnish information to the application dated 30.08.2010. Being not satisfied the Appellant preferred First Appeal before the First Appellate Authority (FAA)/Respondent No. 1 against the application dated 30.08.2010 and not on the application dated 31.08.2010. That the Appellant received a notice from the office of FAA for a hearing. That the Respondent No. 2 and Respondent No. 3 submitted their say through their agent before FAA and did not produce any authority letter to represent them. That the submissions dated 18.10.2010 is in reference to the Appellant's application dated 31.08.2010 and that the reply of Mamlatdar is misleading as he was in a position to furnish the documents sought under RTI as the document No. 2 was prepared by the office of Respondent No. 3 and the same ought to be in their record for ready reference. That the Mamlatdar did not even bother to send Appellant intimation/letter for transfer of application which he ought to do in no case later than five days from the date of receipt of application under section 6(3)(ii) of the RTI Act. That by order dated 09.10.2010 the FAA held that no firm application is made and that the Appellant was free to apply afresh and the matter was closed. Being aggrieved by the said order the Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and the reply of Respondent No. 2 and 3 is on record. It is the case of Respondent No. 2 that the Appeal filed by the Appellant is mischievous in as much as it is filed by misrepresenting facts and the same ought to be dismissed in limine. That the office of Respondent No. 2 had received two applications of the Appellant dated 30.08.2010 and 31.08.2010 and that the contents of the applications have been synonymous; the only difference being one application sought for inspection of the documents and the other was in relation to issuance of certified copies of documents. That the Respondent No. 2 called upon the Appellant to appear before him to inspect the files as well as to obtain whatever copies of documents which he wishes to have. That the Appellant did appear in the office and undertook inspection of the records but failed to ask or point out the relevant documents which he was wanting. That the Appellant is trying to point out technicalities in having not responded to his application dated 30.08.2010. That the Respondent No. 2 has already made its mind clear to the Appellant by permitting to have inspection of all the records and had he to have any ulterior motive then he would not have given an inspection of the documents/records to the Appellant. That the intention of the Appellant is only to encash on the technicality for having not replied to the application dated 30.08.2010 but the reply given by him on 28.09.2010 has to be read compositely and harmoniously as it has just not invited the Appellant only for inspection but had also called upon the Appellant to point out the documents which he wished to possess under the RTI Act, 2005. It is the case of Respondent No. 2 that allowing the inspection of the file by itself is allowing the citizen to gain knowledge in a transparent manner and that he had a clear mind and a clear approach which is in tune with the aim and object of the Act and hence the reply addressed on the Appellant calling upon him to inspect the records was provided accordingly so that both the applications are decided in one go. According to Respondent No. 2 there is no case made out by the Appellant and hence the same ought to be dismissed with costs.

It is the case of Respondent No. 3 that the Appeal filed by the applicant is not maintainable as against Respondent No. 3. That since

no First Appeal was filed by the applicant to the Dy. Collector & SDO who is the appropriate Appellate Authority. On merits it is the case of Respondent No. 3 that the Appellant has made an application under RTI Act, 2005 to the Respondent No. 2 and Respondent No. 3 asking information on cases pertaining to illegal construction on land. That as per the provisions of Land Revenue Code the records of illegal conversion of cases is with Dy. Collector & SDO, Margao. Whenever the Judgment and Order passed by him they are only executing the same. Therefore, his office is bound to keep records and proceedings from filling of checklist till the disposal of cases. That as is done in other cases the original checklist is prepared by the Talathis is forwarded to the Court of Dy. Collector. That the application dated 30.08.2010 and 31.08.2010 transferred to the Dy. Collector and SDO under section 6(3) of the RTI Act. It is also the case of Respondent No. 3 that the applicant has made an application to the Dy. Collector & SDO, Margao to allow him to inspect the cases which shows that the Appellant is himself aware of the fact that the information sought by him is pertaining to the office of the Dy. Collector. According to the Respondent No. 3 the Appeal is liable to be dismissed.

4. Heard the arguments. Shri Neville Furtado, representative of Appellant argued on behalf of Appellant and Respondent No. 2 argued in person. Appellant, Respondent No. 2 as well as Respondent No. 3 have filed the written arguments which are on record.

According to the Appellant the present Appeal is only in respect of application dated 30.08.2010. He submitted that both Respondent No. 2 and Respondent No. 3 have not furnished any information. According to him transfer under section 6(3) was not informed to him nor copy was sent. He came to know about the same only when written submission was made before FAA and that too on 15.02.2010. He also submitted that Respondent No. 3 is a party to the proceedings and as such records should be there.

Respondent No. 1 advanced elaborate arguments. According to him Appellant submitted two applications which were received on

01.09.2010 dated 30.08.2010 and 31.08.2010. One was seeking information and the other sought for inspection of the very same documents. According to him the application made later in point of time would stand to reason to be good and the intent of the petitioner gets spelt out in the very same application dated 31.08.2010. He next submitted that since both the applications were correlated the petitioner was called for inspection of documents as well as to identify and collect documents as required by him. That the Appellant came, inspected the file but failed to collect the documents. According to him letter dated 28.09.2010 speaks of both identifying and collecting the documents. According to him in terms of RTI Act information stands as furnished. According to him there is no issue of harping on the application. He has also stated about the same in his written arguments.

Respondent No. 3 in his written arguments reiterated what is stated in the reply.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. At the outset I must say that the present Appeal is in respect of application dated 30.08.2010.

It is seen that the Appellant by letter dated 30.08.2010 sought certain information from the Dy. Collector, Salcete/PIO/Respondent No. 2. Similar application was also made to Mamlatdar of Salcete/Respondent No. 3. It is seen from the record that no reply was sent by Respondent No. 2 and Respondent No. 3. Of course Respondent No. 2 sent a letter dated 28.09.2010 to the Appellant. However, the same is in connection with application dated 31.08.2010. The letter also mentions as with reference to application dated 31.08.2010.

According to Respondent No. 3 by letter dated 15.09.2010 he transferred the said request to the Dy. Collector and S.D.O., Collectorate of South Goa, Margao. However, the Appellant was not informed as the copy of the letter was not marked to him as required under section 6(3) of the R.T.I. Act. The Appellant it appears came to know about this transfer only on 15.09.2010 when written submission

was filed with reference to the notice before F.A.A./Respondent No. 1. Since the information was not furnished the Appellant preferred Appeal before F.A.A. i.e. Additional Collector-I, South Goa District at Margao. Notice was issued to Respondent No. 3 and Respondent No. 3 even filed reply dated 15.10.2010. However, did not raise the point of jurisdiction. The F.A.A./Respondent No. 1 also did not inform about jurisdiction, etc. Again F.A.A. did not refer to the application dated 30.08.2010 as the Appeal was in respect of application dated 31.08.2010. By order dated 19.10.2010 the F.A.A. observed as under:-

“Called out. All parties present. Gone through the reply filed by Respondent No. 1 and Respondent No. 2. It is seen that ..... no firm application is made. Appellant is free to apply afresh. As such matter stands closed.”

F.A.A. probably refers to inspection only. There is no specific reply from Respondent No. 2 in respect of application dated 30.08.2010.

Coming to the information in respect of Respondent No. 3, in fact Respondent No. 3 has not sent any reply to the Appellant. No doubt he has transferred the application under section 6(3). However, Appellant is not informed about the same. Normally, under RTI Act Respondent No. 3 should have informed the Appellant about the transfer or about the information. Respondent No. 3 does not state specifically that their office does not have information. Under RTI Act only available information is to be furnished. In case the information is not available with the PIO he should state so as non-existing information cannot be furnished. In my opinion Respondent No. 2 and Respondent No. 3 should have replied to the application dated 30.08.2010 and that too within time.

6. Appellant contends that there is delay. According to the Respondents there is no delay as such. If we consider the application dated 30.08.2010 it is seen that there is delay in the sense Respondent

No. 2 and Respondent No. 3 did not reply. Under RTI whenever there is an application there should be specific reply to the same and that too within 30 days. However, considering the factual backdrop of this case I feel parties should be given an opportunity to explain about the same.

7. In view of all the above, Respondent No. 2 and Respondent No. 3 would have to furnish the available information and if the same is not available then they should state so. Respondent No. 2 and Respondent No. 3 are to be heard in deciding about delay. Hence, I pass the following Order:-

### **ORDER**

The Appeal is allowed. The Order of First Appellate Authority is set aside. The Respondent No. 2 and Respondent No. 3 are directed to furnish the information as sought by the Appellant in respect of application dated 30.08.2010 within 30 days from the date of receipt of this Order.

Issue notice under section 20(1) of the Right to Information Act to Respondent No. 2 and Respondent No. 3 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 or before 24.10.2011. The Respondent No. 2 and Respondent No. 3 shall appear for hearing.

Further inquiry posted on 24.10.2011 at 10:30 a.m.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 26<sup>th</sup> day of August, 2011.

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

