

# GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 152/SIC/2009

Pascoal Agnelo Lacerda,  
H. No. E77, Saicowaddo, Deussua,  
Chinchinim,  
Salcete - Goa .... Appellant

V/s.

- 1) The Administrator of Comunidade,  
South Zone,  
Public Information Officer,  
Margao,  
Salcete - Goa .... Respondent No. 1.
- 2) First Appellate Authority,  
The Additional Collector-I,  
Collectorate South Goa,  
Margao - Goa .... Respondent No. 2.

Adv. Shri A. Dessai for Appellant.

Adv. Shri E. J. F. Correia for Respondent No. 1.

## **J U D G M E N T** **(23.08.2011)**

1. The Appellant, Shri Pascoal Agnelo Lacerda, has filed the present appeal praying that the Judgment and Order of the First Appellate Authority be quashed and set aside; that the Respondent No. 1 be directed to provide the appellant the copy of Livro de Agrimensor; that penalties be imposed; that the Appellant be compensated and that the Respondent Comunidade Authority be directed to construct and computerize the Comunidade record and keep proper custody and maintain the record in new format of storing in the interest of public justice.

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

That the Appellant, vide an application dated 08.07.2009, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Secretary of the Administrator of Comunidade of South Zone, Margao, being the Assistant Public Information Officer, to provide the copy of "LIVRO DE AGRIMESOR" in respect of Comunidade paddy field "Subervadem Sinqevadem" under Comunidade de Deussua. That by letter dated 11.08.2009 the Respondent No. 1 informed the Appellant that they searched the above said information in the Comunidade

Archives and found two-three pages of "Livro de Agrimesor" and in the said pages the field name "Subervadem Sinquevadem" cannot be seen. Being aggrieved the Appellant preferred the Appeal before the First Appellate Authority. By order dated 09.10.2009 the F.A.A./Respondent No. 2 dismissed the Appeal. Being aggrieved by the said order the Appellant has preferred the present Appeal on various grounds as fully set out in the Memo of Appeal.

3. The Affidavit-in-reply filed by the Respondent No. 1 is on record. In short it is the case of the Respondent No. 1 that application seeking information was received from the Appellant on 08.07.2009 which was inwarded on 08.07.2009 whereby appellant had asked for the attested copy of Livro de Agrimesor in respect of paddy fields "Subservadem Sinquevadem" belonging to the Comunidade de Deussua. That by an office Memorandum dated 20.07.2009 the said application under R.T.I. Act was forwarded to the Escrivao of the Comunidade de Deussua for obtaining information. That on 03.08.2009 the Escrivao of the Comunidade of Deussua informed the Respondent No. 1 that he searched the information in the Comunidade Archives and forwarded two-three pages of Livro de Agrimensor and in the said pages the field name "Subervadem Sinquevadem" cannot be seen. That by letter dated 11.08.2009 the Appellant was informed about the same. The Respondent No. 1 refers to the First Appeal, Protest Petition, reply to the same as well as order of F.A.A./Respondent No. 2. In short the information sought is not available in the Comunidades records and the relevant register has been eaten by white ants. That the Appellant has been provided all the other available information.

4. Heard the arguments. The learned Adv. Shri A. L. Dessai argued on behalf of the Appellant and the learned Adv. Shri E. J. F. Correia argued on behalf of the Respondent No. 1. Both sides advanced elaborate arguments. Extensive written arguments have been filed and are on record.

Adv. Shri A. Dessai referred to the facts of the case in detail. He also referred to the written arguments on record. According to him the records are deliberately destroyed or hidden. According to him his prayers are to be granted.

Adv. Shri Correia also referred to the facts of the case. According to him original records ought to be with Directorate of Survey and Land Records. He referred to the order of F.A.A. He next submitted that whatever was available has been furnished. According to him Comunidade plan is available in Land Survey Department. He next submitted that book has been brought to show that some records are eaten by white ant. He also referred to the charge December 1994 which shows attacked by white ants. In short according to him whatever available has been furnished.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the learned Advocates of the parties. I have also considered the written arguments on record and various applications on record.

It is seen that the Appellant vide application dated 08.07.2009 sought certain information i.e. Xerox copy of "Livro de Agrimensor" in respect of Comunidade paddy field "Subservadem Sinquevadem" under Comunidade of Deussua, standing in the name of the tenant Assucenna Santimano of Deussua, Chinchinim, Salcete. It appears that the said information was obtained from the Escrivao of Comunidade of Deussua and he informed that he has informed vide letter dated 03.08.2009 that he has searched the above said information in the Comunidade Archives and found two three pages of "Livro de Agrimensor" and in the said pages the said field name cannot be seen. In short the information sought was not available. Being aggrieved the Appellant preferred the First Appeal. By order dated 09.10.2009 the appeal was dismissed. It was also observed about the endorsement made by the then Escrivao that the records of Comunidade of Deussua including the relevant Register have been eaten by the white ants and some of the records are not available. It was also observed that the endorsement therein is quite old.

In short the information is not available with the Public Authority being old. The records were also brought by the Escrivao in the Commission and checked.

6. No doubt information sought may be old, however the same is not available. If the contention that information cannot be furnished as the

information is not available/traceable is accepted then it would be impossible to implement R.T.I. Act. However, it is also a fact that information that is not available cannot be supplied. No doubt records are to be well maintained , duly catalogued and indexed so as to facilitate the Right to Information. In any case the information sought is not available, no obligation on the part of P.I.O. to disclose the same.

I have perused the rulings relied by the Advocate for the Appellant and also of Central Information Commission.

(i) In Shri B. S. Rajput *v/s.* Council of Scientific & Industrial Research (CSIR) (F.No.CIC/AT/A2008/00464 dated 15.09.2008) where Respondent pointed out that all information barring one information (corresponding to Appellant's RTI request dated 13.06.2007) had been provided, the Commission held that it has no reason to disbelieve the categorical assertion of Respondent and the document in question missing is more than 20 years old. Thus document being untraceable cannot be physically disclosed and resultantly there is no disclosure obligation on the Respondent.

(ii) In Shri V.P. Goel *v/s.* Income Tax Department (F. No.CIC/AT/A/2008/00455 dated 10.09.2008) where the Appellate Authority held that since the information requested is not maintained by the officers of Public Authority in regular course of business it did not qualify to be an information 'held by the public Authority in terms of section 2(j) of the R.T.I. Act. The Commission observed that it is not possible to overrule the order of Appellate Authority who has very correctly decided that information which is not maintained or held by the Public Authority cannot be disclosed.

The rule of law now crystallized by the various rulings of C.I.C. is that information/document that is not available cannot be supplied. The Right to Information Act can be invoked only for access to permissible information.

7. The Appellant has filed an application under section 19(8) (b) of the R.T.I. Act. However this Commission is unable to grant the same the way it is mentioned.

8. Regarding delay. The application is dated 08.07.2009 and reply is dated 11.08.2009. There is about 2-3 days delay. However the information was collected from the Escrivao. In any case in the factual matrix of this case the same is liable to be condoned.

9. In view of all the above I do not find any infirmity in the Order of F.A.A. However, F.A.A. should note that R.T.I. is a time bound programme. The Appeal is to be disposed within 30 days or 45 days with reasons.

10. In view of all the above since information is not available the same cannot be furnished. Hence, I pass the following order:-

**ORDER**

Since information is not available the same cannot be furnished. The Appeal is disposed off.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 23<sup>rd</sup> day of August, 2011.

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





