

# **GOA STATE INFORMATION COMMISSION AT PANAJI**

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

Appeal No. 39/SIC/2010

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

Appellant in person. 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 dated 06.01.2010 be quashed and set aside; that Respondent No. 1 be directed to provide the information sought by the Appellant; that the responsibility be fixed on the concerned officials of Respondent Comunidade for causing inconvenience and loss to the Appellant by way of not supplying the information; that compensation be granted to the Appellant and that Respondent Comunidade to construct and computerize the Comunidade records 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 Complainant through his Advocate, vide his application dated 06.10.2009 sought certain information under Right to Information Act, 2005 ('RTI Act' for short) from the Public Information Officer (PIO)/Respondent No. 1. That by reply dated 29.10.2009 the State Public Information Officer has provided the Xerox attested copy of Livro de

Contratos and Livro de Tomb on the ground that Livro de Agrimensor is not found in the Comunidade Archives. That on scrutiny of the documents provided by the said PIO it is found that the information furnished is incomplete and information in respect of Daclimagachi- Adi is not provided at all. Being aggrieved by the incomplete and deficient as well as not providing of the information the Appellant filed Appeal before the First Appellate Authority (FAA)/Respondent No. 2. That by order dated 06.01.2010 the FAA disposed the Appeal by giving inspection to the Appellant with option to take copies. That in compliance of the said order the Appellant alongwith translator Shri Peter Fernandes visited the office of Comunidade. However the requisite information was not available in the said office and the said clerk suggested that the information was available in the office of Respondent No. 1. That on 12.01.2010 the Appellant alongwith the said Peter Fernandes visited the office of Respondent No. 1. However, the Clerk of the Comunidade informed that Register Livro de Agrimensor was not available in the Archives. That the said Clerk also failed to produce for inspection Livro de Contratos. That the Appellant visited the office of the Respondent No.1 many times but they could not collect the information as the Clerk as well as Secretary was not available in the office. Being aggrieved the Appellant has filed the present Appeal on various grounds as fully set out in the Memo of Appeal.

3. The Respondent resists the Appeal and affidavit-in-reply of the PIO/Respondent No. 1 is on record. In short it is the case of Respondent No. 1 that application from Adv. Macklis Pereira was received on 06.10.2009 seeking certain information. That by an office memorandum dated 08.10.2009 the said application under RTI was forwarded to the Escrivao of the Comunidade of Deussua for obtaining information. That on 27.10.2009 the Comunidade of Deussua informed the office of the Administrator by their letter that the attested copy of the Livro de Contratos and attested copy of Livro de Tomb is forwarded to the Office of Respondent No. 1. That by letter dated 29.10.2009 the said Adv. Macklis Pereira was informed to collect the information from the office of the Respondent. It was also informed to him that Livro de Agrimensor was not found in the Archives of Comunidade of Deussua. That inspite of this the Appellant filed Appeal before Respondent No. 2 contending that the information provided is incomplete information. That on 06.01.2010

the records were brought before the FAA nor shown to the Appellant. That the FAA after hearing the parties passed the Order dated 06.01.2010 directing the Appellant to visit the office of Comunidade of Deussua on 12.01.2010 at 10:00 a.m. in order to inspect the records. That the Appellant in pursuance of the said order visited the office alongwith one Peter Fernandes and inspected the documents. It is the case of the Respondent that Livro de Agrimensor was eaten up by white ants and records were completely destroyed and the same could not be provided for perusal of the Appellant and Mr. Peter Fernandes. That the certificate dated 03.07.2006 was not obtained under RTI Act. That during the First Appeal the Appellant had not raised the plea of insufficient application concerning the Livro de Tomb and it is for the first time raised in the Second Appeal. That complete information as to the Livro de Contrados also provided to the Appellant. That there was no negligence on behalf of Respondent No.1 nor any inconvenience caused to the Appellant as the records maintained by the Comunidade of Deussua were made available for the perusal of the Appellant and his translator, Mr. Peter Fernandes. According to the Respondent No. 1 the Appeal is liable to be rejected.

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

Adv. Shri A. L. 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 and prayed that relief sought be granted.

Adv. Shri E. J. F. Correia also referred to the facts of the case. He submitted that whatever information was available has been furnished. He next referred to the Order of First Appellate Authority. According to him Comunidade Plan is available in Land Survey Department. He also perused the book to show that some records are eaten by white ants. In short, according to him whatever information was available has been furnished. He also denied the charge that incomplete information 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 06.10.2009 sought certain information (The Application is in the name of Adv. Macklis Pereira) i.e. (1) Xerox attested copy of the Livro de Contratos", (2) Xerox attested copy of Livro De Tomb and (3) Xerox attested copy of Livro De Agrimesor. It appears that the said application was forwarded to the Escrivao de Comunidade of Deussua, vide Office Memorandum dated 08.10.2009. By letter dated 29.10.2009 the Respondent No. 1 informed the Application that Xerox attested copies of Livro de Contratos and Livro de Tombo is submitted in their office and requested the Applicant to collect the same. It is also informed in the said letter that the Escrivao has informed that the copy of Livro de Agrimesor cannot be found in the said Comunidade Archives. The Applicant, being not satisfied, filed the Appeal before the First Appellate Authority. By Order dated 06.01.2009 the following order was passed:-

"Called out. Heard both parties. The records are in Portuguese language brought and shown to Appellant by Respondent to show which document is required, he says he has to get translator as such appellant to visit the office of Clerk of Comunidade of Deussua on Monday at 10:00 a.m. and after inspection to take copies by taking translator, as such matter stands closed."

The grievance of the Appellant is that incomplete information has been furnished and Livro de Agrimesor is not furnished. According to the Respondent No.1 the Livro de Agrimesor was eaten up by white ants and the record was completely destroyed and the same could not be provided and that complete information regarding Livro de Contratos is also provided to the Appellant.

In short the information is not available with the Public Authority. 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 06.10.2009, the reply is dated 29.10.2009. The same is within time. No doubt later on it took time to inspection etc. However, in the factual matrix the same is liable to be condoned.

9. There is much argument on record regarding Appellant and original applicant. Both sides have filed written arguments. However in the instant case in the peculiar circumstances the same is to be overlooked. R.T.I. Act is a people friendly user friendly Act.

10. I have carefully perused the written arguments of the Appellant as well as Respondent No. 1. The Appellant may be having a genuine grievance, however, under RTI only available information is to be furnished.

11. In view of 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







