

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

Appeal No. 255/SCIC/2010

Shri Allan Faleiro,  
H. No. 400, Toleband,  
Loutolim,  
Salcete - Goa

.... Appellant

V/s.

Public Information Officer,  
Town & Country Planning Department,  
2<sup>nd</sup> Floor, Dempo Towers, Patto Plaza,  
Panaji - Goa

.... Respondent.

Appellant in person.

Respondent in person.

**J U D G M E N T**  
**(19.09.2011)**

1. The Appellant, Shri Allan Faleiro, has filed the present Appeal praying that the complete information be furnished and that penalty be imposed on the Respondent Public Information Officer.

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

That the Appellant, vide application dated 29.10.2010, sought certain information under Right to Information Act, 2005 ('RTI Act' for short) from the Respondent/Public Information Officer (P.I.O.). That by letter dated 19.10.2010 the appellant received some information but the same is incomplete and misleading. That in respect of point at No. 1, 2, 4, 5, 9 and 10 of the application it was informed that the concerned file has been referred to the Government and it has not been received as yet. It is the case of the Appellant that the Respondent ought to have transferred the application under section 6(3) of the RTI Act. Being not satisfied the Appellant preferred the Appeal before the First Appellate Authority. By Order dated 26.11.2010 the Appellate Authority ordered to

transfer the Application under section 6(3) of the RTI Act. Being aggrieved the Appellant has preferred the present Appeal.

3. The case of the Respondent is fully set out in the reply which is on record. In short it is the case of the Respondent that the Respondent referred the application to the 16 A Cell of the Office i.e. Town and Country Planning Department (HQ), Panaji. That on 19.10.2010 i.e. on the 30<sup>th</sup> day of the receipt of the Application the Respondent received the file back with reply put up by the official of the 16-A Cell of this Office. That after perusal of the reply and the documents made available thereunder, it was seen that no such Committee called as '16A Committee' as stated in the application exists. The Respondent also refers to notification, etc. in para 30 of the reply. In view of this the RTI application of the applicant was liable to be rejected as he was asking information about a Committee which does not exist, however, in good faith the Respondent has made him available the information, whatever was made available by deemed P.I.O. under section 5(4) and 5(5) of the RTI Act. With regard to item No. 3 of the 4<sup>th</sup> meeting of the Committee constituted under sub-rule 4 of the rule 3 of Goa Town and Country Planning (Public Projects/Schemes/development works by the Government) Rules, 2008 i.e. regarding proposal of development of plots under 20 Point Programme at plot No. 4-5 and 4-6 at Sr. No. 94 of Verna Village and Sr. No. 160 of Loutolim Village respectively. However, the questions at Sr. No. 1, 2, 4, 5, 9 and 10 of the application were such that could not be answered unless concerned file is available. That the said file was referred to the Government and was not received back as yet. That with regard to other points reply was given. That the Appellant filed Appeal before the First Appellate Authority and by order dated 26.11.2010 the F.A.A. directed the undersigned to transfer the application under section 6(3) of the RTI Act to the concerned PIO. That the Respondent complied the Order. That the said file was sent back and that the information sought at point No. 1, 2, 4, 5, 9 and 10 of the RTI Application. In short

according to the Respondent the information is furnished and that Appeal is dismissed.

4. Heard the arguments of the Appellant and the Respondent. Detail written arguments of both the parties are on record.

Appellant submitted that information has not been furnished on the ground that the same is not available.

According to the Respondent available information is furnished.

5. 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 relief prayed is to be granted or not?

It is seen that the Appellant sought certain information vide application dated 21.09.2010. By reply dated 19.10.2010 some information is furnished and that in respect of some it is informed that documents are not available. Being not satisfied the Appellant preferred the Appeal before the F.A.A and in pursuance of the order the application was transferred under section 6(3) of the RTI Act. By reply dated 16.12.2010 the remaining information is furnished and information in respect of point at Sr. No. 2, 5 and 10 is not furnished as the same is not available on record.

The grievance of the Appellant is that the information is not furnished on the pretext that the same is not available.

In short the information is not available with the Public Authority.

6. From the records and from the written arguments as well as submissions of the Respondent it is seen that the information that is sought is not available. If the contention that information cannot be furnished as the same is not available/traceable is accepted then it would be impossible to implement the RTI Act. However, it is also a fact that information that is not available cannot be furnished. 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 hence no obligation on the part of PIO to disclose the same.

I have perused some of the rulings of the 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. 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 19<sup>th</sup> day of September, 2011.

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





