

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 158/SCIC/2011

Mrs. Supriya Balaji Bharne,
Shivprabha, H. No. 711,
“Sangolda Voltar’ Bus Stop Point,
Porvorim - Goa

.... Appellant

V/s.

1) First Appellate Authority,
Superintending Surveyor of Works (SSW),
P.W.D., Altinho,
Panaji - Goa

.... Respondent No. 1.

2) Executive Engineer,
P.W.D., W.D. VII (NH),
BA, “C-Type”, Govt. Quarters,
Patto Colony,
Panaji - Goa

.... Respondent No. 2.

Adv. P.V. Sardesai for Appellant.
Respondent No. 2 in person.

J U D G M E N T
(09.11.2011)

1. The Appellant, Smt. Supriya Balaji Bharne, has filed the present Appeal praying that the Respondent be ordered to issue the information specified at No. 8(i) without additional costs; that if the said information is being preserved by the P.W.D. at some office of theirs or is with some other Authority connected with their said functions, the Respondent may kindly be ordered to obtain from such office or authority and supply to the Appellant.

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

That the Appellant vide application dated 24.02.2011 sought certain information under Right to Information Act, 2005 (‘R.T.I. Act’ for short) from the Public Information Officer (P.I.O.)/Respondent No. 2. That the Appellant was supplied part of the information and not the full information which the Appellant desired. That the Department does not possess such important plans or data as to the landmarks like retaining wall built by them is difficult to accept. That being aggrieved by the same the Appellant preferred Appeal before the First Appellate Authority

(FAA)/Respondent No. 1. However, Respondent No. 1 upheld the Order of P.I.O. Being aggrieved by the said Order the Appellant has preferred the present Appeal.

3. The Respondent resists the appeal and reply of Respondent No. 2 is on record. It is the case of Respondent No. 2 that the plan as per Section 6 under the Land Acquisition available with the office were furnished to the appellant vide letter dated 23.03.2011. That the details are not traceable in the office as the case is more than 30 years old. That the final marking line as per Land Acquisition is as per the plan furnished to the Appellant. That the acquired portion of the plot survey No. 40/3 (Village Socorro) is shown as per section 6 under Land Acquisition. That the details of the safety compound wall are not traceable in the plan furnished to the Appellant. In short, it is the case of Respondent No. 2 that all the information available with the Respondent has been provided to the Appellant and she was further asked to approach the concerned Sub Divisional Officer in case any further details were required. That the Respondent No. 2 has not withheld any information from the Appellant.

4. Heard the arguments. The learned Adv. Shri P. V. Sardesai argued on behalf of the Appellant and the Respondent No. 2 argued in person.

Advocate for the Appellant narrated the facts of the case in detail. He also referred to the wall and other aspects. According to him the said wall was built by P.W.D. and as such the details ought to be there. According to him it is difficult to accept that the details are not with the Opponent.

During the course of his arguments the Respondent No. 2 submitted that whatever information was available has been furnished. According to him the details which the Appellant seeks are not in the record. That they are not available and as such cannot be 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 not in dispute that Appellant filed an application dated 24.02.2011. It is also not in dispute that part information was furnished on 23.03.2011. According to the Respondent some information is not available as record

of details of work carried out by the contractor, total payments to the contractor, etc. are not traceable in their office as the work was carried out more than 30 years back. Being not satisfied the Appellant preferred the Appeal before F.A.A. By order dated 15.06.2011 the F.A.A. held that available information has been furnished and Appeal was disposed off.

In short, information sought is not available with the Public Authority. According to the Respondent No. 2 the same is old being more than 30 years old.

6. No doubt that information sought is old. However, the same is not available or traceable. If the contention that information cannot be furnished as the information is not traceable is accepted, then it would be impossible to implement the R.T.I. Act. However, it is also a fact that information that is not available cannot be supplied. No doubt records have to be well maintained. 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 some of the rulings of Central Information Commission on the point.

(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. It is to be noted here that the purpose of R.T.I. Act is per se to furnish information. The mandate is to furnish information so that information seeker is satisfied. However, in the instant case since information is not available the same cannot be furnished. Under R.T.I. Act information can be furnished if records are traceable. However, to my mind the Appellant should take inspection of files, documents/records, so that he can satisfy about the same. The Respondents on their part should give inspection to the Appellant on a mutually agreed date, i.e. 23.11.2011 at 11:00 a.m. and in case any document is available Respondent no. 2 to furnish the certified copy of the same to the Appellant as per R.T.I. Act.

8. In view of all the above since information is not available, the same cannot be furnished. However, inspection can be given to the Appellant. Hence, I pass the following Order:-

ORDER

No intervention of this Commission is required as information is not available. The Appeal is disposed off.

However, Respondent no. 2 is directed to give inspection of records, documents/files to the Appellant on 23.11.2011 at 11:00 am onwards and the Appellant to take inspection on that day. In case any documents/information is available the same can be furnished to the Appellant as per the R.T.I. Act.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 9th day of November, 2011.

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