

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Complaint No. 11/SCIC/2011

Shri Kiran Gadekar,
H.No. 161, Maimollem,
Udaiwadi,
Vasco-da-Gama – Goa

...Complainant

V/s

Public Information Officer,
Office of Dy. Collector &
S.D.O. Mormugao,
Vasco-da-Gama – Goa

... Opponent.

Adv. Shri N, Pai for the Complainant.
Opponent in person.

ORDER
(15.11.2011)

1. The Complainant, Shri Kiran Gadekar, has filed the present Complaint praying that the Opponent/Public Information Officer be directed to provide the said information sought by application dated 03.08.2010. That the Opponent be directed to compensate for the loss and other detriments suffered and that penalty be imposed for not supplying the information.

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

That the Complainant vide application dated 03.08.2010, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (P.I.O.)/Opponent. That the Opponent did not provide the information sought within 30 days from the date of filing the application. That the Complainant approached the office of Inspector of Survey and Land Records, City Survey Department, Vasco vide application dated 15.04.2010 seeking information with respect of Chalta No. 139 and 140 of P.T. Sheet No. 140 of property situated at Vasco city, Mormugao taluka, Vasco-Goa. That in this connection the Complainant was replied dated 02.06.2010 that the said properties were in the name of Mandrekar family by the Court of Dy. Collector and S.D.O., Vasco-da-Gama, Mormugao in case No. LRC/PART/32/94 vide Order dated

17.09.1996 that based upon the reply/information provided by the said Inspector of Survey and Land Records the Complainant approached the office of the Opponent requesting to furnish the information/certified copies under R.T.I. with regard to said case number vide application dated 20.50.2010 and subsequently all the copies/documents which were available in the said case filed was provided to the Complainant, i.e. copies of Deed of Family Partition, copy of Form D, copy of Judgment and Order, notices and survey plan were provided to the Complainant. That on receiving the said documents the Complainant found that the Sale Deed and Form D to whom the said property belongs were missing. That since the Complainant was not provided with the information/certified copies of the Sale Deeds and Form D, the Complainant requested vide his application to issue certified copies of the Sale Deed and Form D and also sought information on what basis the said property was confirmed in the name of Mandrekar family but the Opponent failed to provide the necessary information/certified copies sought by the Complainant within 30 days as stipulated under the RTI Act. That since the Complainant was not provided with the required information the Complainant preferred the Appeal before First Appellate Authority, office of Collector, South Goa, Margao. That upon the Appeal preferred by the Complainant the matter was taken up, heard and by Order dated 18.10.2010 the First Appellate Authority dismissed the Appeal. That the Complainant has not only refused the information but also shown scant respect to the provisions of R.T.I. Act. That the Complainant is entitled to seek information. Being aggrieved the Complainant has filed the present Complaint.

3. The Opponent resists the Complaint and the reply of the Opponent is on record. It is the case of the Opponent that the complainant vide application dated 03.08.2010 requested to issue certified copy of Sale Deed and Form D under R.T.I. Act pertaining to case No. LRC/PART/32/94. That the Complainant filed similar application on 22.05.2010 asking certified copy of all documents pertaining to the said case and the same were issued to the complainant. That on receipt of the application dated 03.08.2010 the Complainant was called in their office and requested to verify the file of the said case which he checked and in the said file there was no Sale Deed and Form D as the partition was carried out based on Deed of Family Partition

vide order in the year 1995. That the Complainant has filed the Second Appeal before this authority with regard to the same application which is dismissed by First Appellate Authority. According to the Opponent the Complainant has been issued all information that is available with their office in the concerned file and that present Complaint is liable to be dismissed.

4. Heard the arguments. Adv. Shri N. Pai argued on behalf of the Complainant and the Opponent argued in person. The Opponent has also filed written submission which are on record.

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 by application dated 03.08.2010 the Complainant sought certain information i.e. the certified copies of the Sale Deed and Form D. However the Complainant also sought information that in case if there is no Sale Deed or form D that under what documents the said property was confirmed in the name of Mandrekar family and to issue the relevant letter giving in brief under which the said property is confirmed in the name of Mandrekar family.

It is to be noted here that in the said application dated 03.08.2010 the Complainant states that he checked all the copies of the said file under R.T.I. but he found that Sale Deed and Form D is missing. That means what the Complaint was seeking was not available in the records of the said case. According to the Opponent on receipt of the application dated 03.08.2010 the Complainant was called in their office, requested to verify the said file which the Complainant checked and there was no Sale Deed and Form D as the partition was carried out based on Family Deed of Partition. Being not satisfied the Appellant preferred the Appeal before the First Appellate Authority. The First Appellate Authority held that the information asked for is submitted to the Complainant and, therefore, the Appeal was dismissed.

6. It is pertinent to note that Appellant himself found that the said documents are not in the file, yet he asks for the same. It is also made clear to him that partition was made on the basis of Deed of Family Partition.

Apart from that the document which is not available cannot be furnished. If the information is not available there is 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. The next point is Complainant wants information as to under what documents they have confirmed the said property in the name of Mandrekar family. To my mind this query cannot be allowed. In the same way the information regarding issuing of relevant letter giving in brief under which the said property is confirmed. The same also cannot be furnished.

The combined reading of section 2(f), 2(i) and 2(j) of the R.T.I. Act would show that a citizen is entitled for disclosure of information which is in

material form with the Public Authority and the “information” and the right to seek do not include opinions, explanations, justifications, etc. R.T.I. Act cannot be invoked to demand and obtain from the Public Authority explanations, reasons, justifications and so on in respect of a decision made. It is also held by Central Information Commission in various rulings that queries like, ‘why’, ‘what’, ‘how’, etc. cannot be answered by Public Authority and in the guise of information seeking explanations and queries about nature and quality of action of Public Authority need not be raised for answer.

8. In view of all the above the information that is sought cannot be furnished to the Complainant. However, I am of the opinion that the Complainant has to fully satisfy about the same. With this view Complainant to take inspection of the records and all the concerned file. The Opponent to give inspection on a mutually agreed date and in case of inspection if the said document is found, etc. the same can be furnished to him. Hence, I pass the following Order:-

ORDER

The Complaint is partly allowed. No intervention of this Commission is required in so far as information is concerned as available information is furnished.

The Opponent to give the inspection of documents/file to the Complainant on a mutually agreed date but within 15 days from the receipt of this Order and thereafter on inspection of the documents sought are available the same could be given.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 15th day of November, 2011.

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

