

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.128/SCIC/2011

Miss Annabelle Pereira,
Mirabel Resort,
Dona Paula, Goa

... Appellant

V/s

1. The Public Information Officer,
EDC Limited,
EDC House,
Dr. A. B. Road,
Panaji-Goa

2. The Managing Director (FAA)
EDC Limited,
EDC House,
Dr. A. B. Road,
Panaji-Goa

... Respondents

Appellant absent.

Respondent No.1 present.

Respondent No.2 absent.

Adv. Shri Sonak for respondent No.2 present.

Adv. J. Ramayya for appellant present.

J U D G E M E N T

(13/10/2011)

1. The appellant, Miss Annabelle Pereira, has filed the present appeal praying that this Commission may please set aside the impugned order dated 02/05/2011 and allow the application dated 23/02/2011 of the appellant by directing the respondent to furnish copies of the documents stated in the said application and that necessary disciplinary/departmental action be initiated against the respondent for not furnishing the

information sought by the appellant under the Right to Information Act and/or fine.

2. The brief facts leading to the present appeal are as under: That the appellant vide application dated 23/2/2011, 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.1. That vide letter dated 9/3/2011 the respondent was pleased to reject the application of the appellant. That being aggrieved of the said letter/order dated 9/3/2011 the appellant preferred appeal before First Appellate Authority(F.A.A.)/Respondent No.2. By order dated 2/5/2011, the F.A.A. passed the order thereby disposing the appeal of the appellant without affording any opportunity to the appellant, thereby violating Principle of Natural Justice. Being aggrieved by the said order, the appellant has filed the present appeal on various ground which are fully set out in the memo of appeal.

3. The respondent resists the appeal and the reply of the respondent No.2 is on the record. In short, it is the case of the respondent No.2 that vide order dated 02/05/2011, the respondent No.2 has disposed off the appeal with directions to give the inspection of all the files as requested by the appellant. That under the circumstances the said order dated 02/05/2011 cannot be construed as rejection and therefore filing of second appeal does not lie, being premature. That the appellant ought to have taken the inspection of which opportunity was made available to her. That the appellant has not disclosed the reason for filing the second appeal without exhausting the opportunity made available to her by the First Appellate Authority. That the respondent No.2 admits of application dated 23/02/2011 being filed, reply dated 09/03/2011 being given and also admits of filing first appeal. According to him

the order passed is legal and that opportunity was given to the appellant to indicate the documents required itself constituted compliance with principle of natural justice. The respondent No.2 denies specifically the grounds set out in the memo of appeal.

4. Heard the arguments. Ld. Advocate Shri J. Ramaiyya argued on behalf of the appellant and the ld Advocate Shri Sonak argued on behalf of the respondent No.2. Advocate for the appellant referred to the facts of the case in detail. According to him no documents were given and he also submitted that in terms of Sec.4 records are to be properly maintained.

5. During the course of his arguments, advocate for respondent No.2 submitted that the inspection was given and even the party has signed. According to him all the files were submitted for inspection. He also submitted that they maintain the records as per their procedure.

6. I have carefully gone through the records of the case and also considered the arguments advanced by the Ld. Advocate for the parties. The point that arise for my consideration is whether the relief prayed is to be granted or not?

7. It is seen that by letter dated 23/02/2011, the appellant sought certain information. The information consisted of four items, Sr. No.1 to Sr. No.4 and the same is in the nature of Xerox copies of certain documents. By reply dated 09/03/2011, the P.I.O. informed that the documents at Sr. No.1 to Sr. No.4 are not available in their record/files and expressed inability to provide the Xerox copies of these documents. The respondent No.1 also clarified that corporation

has given the inspection of available file pertaining to M/s. Bella Vista Hotel Pvt. Ltd in June 2010 and that inspection was carried out by the appellant on various dates. Being not satisfied, the appellant preferred the appeal before F.A.A./respondent No.2 by order dated 02/05/2011, the F.A.A. directed the P.I.O. to give the inspection of all the files on request by the appellant. There is also mention in the order about the non-availability of documents in their record. In short the information is not available with the public authority.

8. No doubt the information sought is of recent origin i.e. June, 2008. However, the same is not available. If the contention that information cannot be furnished as the information is not traceable/available 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 furnished. No doubt, records are to be well maintained i.e. duly cataloged and indexed so as to facilitate Right to Information. In any case, information sought is not available, so no obligation on the part of P.I.O. to disclose the same.

9. I have perused some of the rulings of Central Information Commission.

(i) In Shri B. S. Rajput V/s. Council of Scientific & Industrial Research (C.S.I.R.) (F. No.CIC/AT/A 2008/00464 dated 15/09/2008) where respondent pointed out that all information bearing one information (corresponding to appellant's R.T.I. 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 of the respondent.

(ii) In Shri V. P. Goel V/s. Income Tax Department (F. No. CIC/AT/A/2008/00455 dated 10/9/2008) 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 Sec. 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.

10. 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 R.T.I. Act can be invoked only for access to permissible information.

11. It was contended that no opportunity of hearing was given. No doubt provision clearly states so. However principles of natural justice require that fair opportunity is to be given. The F.A.A. to take note of the same.

12. Regarding aspect of delay. Considering the application and the reply there is no delay as such. During the course of arguments, to a suggestion to take inspection, advocate for appellant agreed to take the inspection. The P.I.O./respondent No.1 to give the inspection to the appellant of all the relevant files and in case, the documents are available, the same could be furnished in accordance with law. In view of all the above, since information is not available, the same cannot be

furnished. However inspection can be give. Hence, I pass the following order.

O R D E R

The appeal is partly allowed. Since the information is not available, the same cannot be disclosed. However, the respondent No.1/P.I.O. is directed to provide/give the inspection of all the relevant files to the appellant on 15/11/2011 at 11 am.

The appellant to remain present at the Office of the P.I.O. for inspection on that day.

The appeal is accordingly disposed off.

Pronounced in this Commission on this 13th day of October, 2011.

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

