

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 55/SIC/2011

Shri Luel Fernandes,
R/o.136, Cotta,
Chandor, Salcete, Goa

... Appellant.

V/s.

1. The Public Information Officer,
State Registrar-cum-Head of Notary Services,
Shrama Shakti Bhavan, 7th Floor,
Patto, Panaji – Goa
2. First Appellate Authority,
Law Secretary, Secretariat,
Porvorim – Goa

... Respondents

Appellant in person.

Ld. Adv. Shri Talaulikar on behalf of Respondent No. 1

and ld. Adv. Shri K.L. Bhagat on behalf of respondent No.2.

J U D G M E N T
(20/12/2011)

1. The Appellant, Shri Luel Fernandes, has filed the present Appeal praying that Public Information Officer and appellate Public Information Officer be directed to act as Information Officer and not as postman by dishing out only copies of what exist in files/records, the information should be true and not conflicting; that P.I.O. be directed to divulge the said information and that fine be imposed on the said P.I.O. as well as Appellate P.I.O.

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

That the sale deed dated 22/4/2002 has been registered in it, it has reference to another document called Deed of Partition dated 07/02/1983. That both these documents claiming to be falling within jurisdiction of V.P. Chandor. That this Deed of Partition has vital ingredient such as s/n which are blank and it also claims that land registration mentioned at some place as 99. That the information also received by the appellant from the Public

Information Officer claims that the registration No.99 pertains to the villages of Councolim and Quilosim respectively and not to the village of Chandor; that the purpose of registration of documents is to inform the public that an event has occurred and that one may know the event as event of conveyance and not birth/death. In short according to the appellant one has to read the documents to know the ingredients in order to come to a conclusion. It is the case of the appellant that he made three pertinent question requesting 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 reply was furnished. Being not satisfied with the said reply, the appellant preferred appeal before F.A.A./respondent No.2. That by order dated 02/03/2011, the F.A.A. dismissed the appeal. Being aggrieved the appellant has preferred the present appeal praying for the relief as mentioned herein above.

3. The respondent resists the appeal and the reply of respondent No.1 is on record.

It is the case of respondent No.1 that the information sought by the appellant vide his application dated 27/10/2010 is attracted by the provision of Sec.2(f), 2(j) as the same is not in material form but in the form of advice and opinion and question forms and therefore the provisions of R.T.I. Act are not attracted. That the same can not be termed as "information" within the meaning of section 2(f) of the R.T.I. Act. That notwithstanding this, the respondent No.1/PIO provided him some sort of information in good faith vide letter dated 30/11/2010. On merits, it is the case of respondent No.1 that application seeking information was received and that the stand taken by respondent No.1/PIO is in accordance with the Rules and Regulations which are prevailing. With reference to the prayers it is the case of respondent No.1 that first clause of the prayer is illusory and has no legal footings. Regarding prayer 2 and 3, the appellant is not entitled to the said relief and according to the respondent No.1 appeal is liable to be dismissed.

4. Heard the arguments. The appellant argued in person. Ld. Adv. Shri Talaulikar argued on behalf of Respondent No. 1 and the ld. Adv. Shri K.L. Bhagat argued on behalf of respondent No.2.

The Appellant referred to the facts of the case in detail. According to him information is not furnished. He next submitted that what has been sought is what has been conveyed by the said conveyance and that this is the basic information. He also referred to queries. He also filed written arguments which are on record.

During the course of his arguments, adv Shri Talaulikar referred to the application. According to him, the question is hypothetical. He next submitted that whatever sought does not come within the scope of R.T.I. He also relied on the decision of CIC.

Advocate Shri Bhagat submitted that the respondent No.2 disposed the appeal within the stipulated period. He also submitted that no relief has been sought against him in the present appeal.

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 27/10/2010, the appellant sought certain information. The information is as under :-

“Now under the right to information act kindly let me know since you have registered a document called a sale deed whose origins are based on another deed called a Deed of Partition whose vital ingredients are blanks or contrary to each other whether

(1) if such deed is a valid/invalid document?

(2) If it is a valid document, then what have you conveyed? Since you claim that there is a sale deed.

(3) If such deed is valid one then will your office take responsibility and liability of all consequences arising out

of the use of such sale deed i.e. presentation to the banks for loans, hypothecation, lieu's /for mutation/courts etc.

By letter dated 30/11/2010 the opponent enclosed the information received from Civil Registrar-cum-sub-Registrar, Salcete, Margao, Goa. Being not satisfied the appellant preferred the Appeal before the First Appellate Authority. By order dated 2/3/2011, the appeal was dismissed.

6. It would not be out of place to mention here about the definition of information. Under Section 2(f) "Information" means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. In an old case (AIR 1957 Punjab 226) the Punjab High Court explained "information" as synonymous with knowledge or awareness in contradistinction to apprehension, suspension or misgiving.

Section 2(i) "record" includes –

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document
- (c) any reproduction of image or images embodied in such a microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device;

It is to be noted here that the term "record" for the purpose has been defined widely to include any documents manuscript, file etc. Under Clause 2(j) "the Right to Information" means the right to information accessible under this Act which is held by or under control of any public authority and powers under the Act include the right to

- (a) inspect works, documents, records of any Public Authority;

- (b) take notes, extracts or certified copies of documents or records
- (c) take certified samples of material and
- (d) obtain information of printouts, diskette, folders, tapes, video cassettes or any other electronic mode or through printouts where such information is stored in a computer or in any other device.

7. It is to be noted here that Section 2(j) provides only information held by or under the control of any public authority. It does not mean that an information seeker can solicit opinion from P.I.O. of a public authority. The rule of law now crystallized by the various rulings of Central Information Commission and State Information Commission is that the information held is to be provided and Commission's jurisdiction can go no further than only directing that information in the form held be provided.

Again it is held (as decided by CIC in K. Anand Kini V/s. Canara Bank on 10/05/2007) that no queries like why, what, how, etc can be answered by a Public Authority. In the guise of information seeking explanations and queries about nature and quality of action of public authority need not be raised for answer. Again it is held that RTI Act does not cast on the Public Authority any obligation to answer queries in which attempt is made to elicit answers to questions with prefixes such as why, what, when and whether.

In Shri Vibhor Dileep Baria V/s Central Excise and Custom Nashik (Appeal No.CIC/AT/A/2006/00588 dated 30/11/2006) it is observed in para 11 and 14 as under:-

“11. Right to Information Act confers on all citizens a right to access information and this right has been defined under section 2(j) of the said Act. An analysis of this section would make it clear that the right relates to information that is held or under the control of any public authority. If the public authority does not hold information or the information

cannot be accessed by it or under section 2(f) or if the information is non-existent, the public authority cannot provide the same under the Act. The act does not make it obligatory on the part of the public authority to create information for the purpose of its dissemination”

“14. Thus information would mean any material in existence and apparently it cannot mean and include something that is not in existence or to be created. An “opinion” or an “advice” if it is a part of the record is “information” but one cannot seek from a PIO either an “opinion” or an advice” as seeking such opinion or advice would be in effect seeking a decision which the C.P.I.O. may not be competent or authorized to take. Similarly, the existing report is information but preparing a report after an enquiry cannot be treated as available information. Likewise the data maintained in any electronic form is “information” and the whole of such data or a part thereof can be made available to an applicant by a public authority under RTI Act. But making an analysis or data so collected cannot be expected to be done by the C.P.I.O. under RTI Act. On the same analogy, answering a question, preferring advice or making suggestions to an applicant is clearly beyond the purview of the Right to Information Act.”

8. It is to be noted here that P.I.O. is required to provide the information which may be available in any form with his office, rather than giving his ‘personal opinion’ on the questions asked by an information seeker. Information does not include opinions, explanations and clarification etc. Again there is no responsibility cast on the P.I.O. to interpret any law or rule to an information seeker.

In Shri Madanlal Mirg V/s Ministry of Home Affairs (F.No.CIC/AT/A/2006/00105 dated 30/6/2006) it was observed as under :-

“.....
.....The information which he is seeking is not about

administration or any quasi-judicial function of the public authority but it is about the public authorities opinion and views and explanations about the documents the appellant has accessed. We concur in the plea of the A.A and C.P.I.O. that the R.T.I. Act does not cast on them an obligation to explain to the appellant the contents of the documents that he has already been supplied
.....
..... Once an applicant has been provided access to the information, he cannot ask the public authority questions about who's and why's of those documents".

9. Coming to the information sought the way the queries have been asked the same do not come within the ambit of R.T.I. Act. Regarding item No.1 and 3 the same cannot be answered the way they have been framed. Regarding item No.2/query No.2 the same also cannot be answered the way it is asked. However to my mind considering the aspect of registration of sale deed etc only some part of the query can be supplied with information; that part is as under:-

What has been conveyed by the said sale deed?

As pointed above other points do not come within the meaning of information as pointed herein above.

10. Whether there is delay in furnishing information?

It is seen that the application dated 27/10/2010 was received on 28/10/2010. By letter dated 12/11/2010 the information was sought from the Sub-Registrar, Salcete, Margao, Goa. By letter dated 19/11/2010 the Sub-Registrar sent the same to the Office of District Registrar and by letter dated 30/11/2010 the same was furnished to the appellant. No doubt there is delay of about two days. The same is not intentional or deliberate. In any case considering the factual backdrop of the case the same is to be condoned and/or overlooked.

11. In view of above, I pass the following order :-

ORDER

The appeal is partly allowed. The respondent No.1 is hereby directed to furnish the information in respect of point mentioned in para 9 herein above, that is “what has been conveyed by the said sale deed?” within 20 days from the receipt of this order and report compliance.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 20th day of December, 2011.

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

