

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

**Appeal No. 9/SIC/2011**

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

... Appellant.

V/s.

1. The Public Information Officer,  
Secretary of Village Panchayat,  
Chandor - Goa

2. The First Appellate Authority  
Office of the Block Development Officer,  
Margao – Goa

... Respondents

Appellant in person.

Respondent No. 1 present.

Respondent No.2 absent.

Smt. Sulochana Naik, L.D.C. representative of respondent  
No.2 present.

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

1. The Appellant, Shri Luel Fernandes, has filed the present appeal praying that the respondent No.1 be ordered to immediately supply all the information rightfully sought by the appellant herein under the Right to Information Act, 2005; that due penalty under the said act be levied on respondent No.1 and mandatory on 2 herein for not complying with the spirit and requirement of the said Act while giving wrong information sought by the appellant; that disciplinary action be initiated against respondent No.1 and 2 by the respective offices against their unbecoming behaviour as Public

Information Officer under the Act and as public servant in general.

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

That a compound wall has been built by entertaining a license by one applicant Mrs. Filomena Fernandes. That this wall built and access to other people has been blocked. That the appellant vide his application dated 7/9/2010 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 the respondent No.1/Secretary issued the sale deed on the basis of which a license was entertained. That the disputed license lands up in the court. That in the meanwhile the applicant came to know that the licensee fraudulently applies for the construction license of the boundary wall without having any title over the land and that the said information does not reach the court. That till date there is no reply to the information asked in point 2. That no information has been furnished within 30 days. That being not satisfied, the appellant preferred appeal before First Appellate Authority/respondent No.2 herein. That the F.A.A. also failed to direct the information to divulge the correct information. Being aggrieved, the appellant has preferred the present appeal praying for the above mentioned relief.

3. The respondents resist the appeal and their replies are on record. It is the case of respondent No.1 that the appeal filed is misconceived, mischievous and capricious in as much as it is filed only for the sake of causing harassment to the P.I.O. for no rhyme or reason. That the P.I.O. is duty bound to supply or any such information which is available in black and

white. That the question of supplying information is an abstract form is not within the domain of respondent No.1. That the office of P.I.O. is not permanent in nature nor are the elected members. That the facts which are/were in the knowledge of the predecessor cannot be collected to tailor the replies of the parties and/or to provide the information. That the Village Panchayat Secretary is transferable and any talks which had taken place by and between his predecessor and with any other person in relation to the suit is not within the knowledge of the respondent No.1. It is the case of respondent that respondent No.1 received request from appellant to supply information on 09/09/2010 which has been well supplied within the stipulated time i.e. 08/10/2010. That appellant is trying to make reason of the alleged Deed of Sale to say that it is wrong or invalid which sale deed is already a subject matter of challenge before the appropriate forum. That the appellant is trying to suggest certain things so as to establish the stand taken by him the Civil Court gets vindicated. That the question which are to be tried and tested before the Civil Court cannot form the basis to seek information under the Right to Information Act and the said act does not contemplate to settle issues of letter. That since the information sought for is already supplied to the applicant, question of filing appeal does not arise. According to the respondent No.1 appeal is liable to be dismissed.

4. It is the case of the respondent No.2 that appeal was filed by the appellant. That parties were heard and the appeal was dismissed by order dated 22/11/2010. According to respondent No.2 appeal is liable to be dismissed.

5. Heard the appellant as well as respondent No.1. According to the appellant, the information has not been

furnished fully. He next submitted that the information asked is liable to be furnished.

During the course of his argument, respondent No.1 submitted that whatever available information has been furnished.

6. 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 07/09/2010 the appellant sought certain information. The information sought is as under:-

“Now under the Right to Information Act kindly let me know if you had informed your lawyer who is defending the Panchayat case if

1. On this subject matter that the applicant did not have titles over the land and the Local Authority could not grant such permissions for the constructions of the compound wall.
2. What were the noting/reply given by him and the date when did you brief him up kindly give the case Nos. in which you briefed him up and whether his information was placed before the said court.
3. Under the deed of Conveyance given to you by Miss.Filomena Fernandes kindly let me know
  - (a) the survey No. in which you have permitted the said construction as the Conveyance Deed itself is blank
  - (b)Who has sold/given the land to her.

(c) Give the description of the Matriz No.1404 and Land Registration No..... (blank) as per the title deed submitted.

4. Shri Inatius Dias has been your retainer/Adviser for the Panchayat. Kindly issue me a copy of the advice/guidance given and the fees charged for such advice.”

By reply dated 01/10/2010, the respondent No.1 furnished the information to all the four points. Regarding point No.2 it is informed that the dates on which the lawyer was briefed is not available in records. It was also informed that as per the briefings the reply has/may have been given by the counsel appearing on behalf of the Panchayat. Being not satisfied the appellant preferred the appeal. By order dated 22/11/2010 the appeal was dismissed. The F.A.A. observed as under :- “On perusal of the appeal, reply filed by the respondent and arguments filed by the appellant and in view of the above discussion it is concluded that respondent has provided the correct information to the appellant within the stipulated time.”

7. Appellant contends that till date there is no reply to the information asked that is the point No.2.

As per the reply given the said record is not available. No doubt the information appears to be of recent origin. However the same is not available, I do agree that if the contention that information cannot be furnished as the same is not available 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 supplied as it did not qualify to be an information “held” by public Authority in terms of Sec.2(j) of the R.T.I. Act. No doubt records are to be well maintained so as to facilitate Right to

Information. In any case under R.T.I. information which is not available cannot be disclosed.

I have perused some of the rulings of Central Information Commission on the point. 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.

8. Coming to Item No.1, 3 (a), (b) and (c) and 4 the information is furnished.

In respect of item at Sr. No.3, Deed of Conveyance is furnished. Normally R.T.I. Act does not cast an obligation to explain to the information seeker the contents of the documents that he has already been supplied. However regarding (c) the P.I.O. has answered the query regarding Matriz No. etc. Therefore in my view regarding (a) also P.I.O. can furnish the information. That is "(a) the survey No. in which you have permitted the said construction as the conveyance deed itself is blank".

As pointed above information regarding other points is already furnished.

9. From the records it is seen that appellant might be having a genuine grievance. However redressal of the same is perhaps with another authority.

10. In view of all the 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 No.3 of the application dated 07/09/2010 i.e.”3(a) the survey No. in which you have permitted the said construction .....” within 20 days from the receipt of this order and report compliance.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 20<sup>th</sup> day of December, 2011.

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

