

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 212/SCIC/2011

Lida Matilda Almeida Joao,
Baga Velim,
Salcete - Goa

.... Appellant

V/s.

1) Addl. District Court-II,
South Goa, Margao

... Respondent No. 1.

2) Public Information Officer,
Sessions Court,
South Goa,
Margao

.... Respondent No. 2.

Adv. V. Kamat for Appellant.
Respondent No. 2 in person.

J U D G M E N T
(23.01.2012)

1. The Appellant, Ms. Lida Joao, has filed the present Appeal praying that records be called and that information as sought be furnished.

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

That the Appellant, vide application dated 18.03.2011, 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. By reply/order dated 11.04.2011 the request was rejected. Being not satisfied the Appellant preferred the Appeal before First Appellate Authority (F.A.A.)/Respondent No. 1. By Order dated 08.07.2011 the Appeal was dismissed. Being aggrieved the Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. In pursuance of the notice issued the Respondent No. 2/P.I.O. appeared. He did not file any reply as such. However, he advanced arguments.

4. Heard the arguments. The learned Adv. V. Kamat argued on behalf of the Appellant and the Respondent No. 1/P.I.O. argued in person.

Advocate for Appellant referred to the facts of the case in detail. He referred to the application and submitted that what is sought is not an explanation. He next referred to the Order of F.A.A. particularly para 15, 16, 17 and 18. According to him F.A.A. exceeded his powers. He next submitted that 'why' is not asked and further submitted that there are no rules to formulate a question in a particular case.

During the course of his arguments the Respondent No. 1 referred to the facts of the case as well as the information sought. According to him the same cannot be granted. He relied on two rulings of C.I.C. the Xerox copies of which are on record. He referred to the Order of F.A.A. particularly para 18. According to him information is not available.

In reply Advocate for Appellant submitted that P.I.O. has not stated that information is not available.

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 18.03.2011 the Appellant sought information as under:-

“..... Kindly provide the detailed information as to on what basis the said RCC 93/02/I was transferred to 'D' Court i.e. Judge S. Prabhudessai when the list provided shows as allotted to III Addl. Court as other matter/cases of mine have been transferred as per the allotment Order dated 03.01.2011 (Certified true copies also if any).”

By reply dated 11.04.2011 the Respondent No. 1 informed the Appellant that the information sought could not be provided as there is no provision in the R.T.I. Act to provide explanation to information seeker/applicant by the P.I.O. and the application was rejected. Being aggrieved the Appellant preferred an Appeal before the First Appellate Authority (F.A.A). By Order dated 08.07.2011 the F.A.A. dismissed the Appeal.

It is the grievance of the Appellant that Appellant was erroneously denied the information.

6. A 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 a public authority and the right to seek does not include opinions, explanations, etc.

I have perused some of the rulings of C.I.C. on the point including the rulings relied by the Respondent No. 1.

- (i) In *K. Anand Kini V/s. Canara Bank* (as decided by C.I.C. on 10/5/2007) it is held 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 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.
- (ii) In *Shri Vibhor Dileep Baria V/s Central Excise and Custorm 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-est, 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 R.T.I. 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.”

(iii) In *Celsa Pinto V/s. Goa State Information Commission*, (Writ Pet. No.419/2007 decided on 3-4-2008) the High Court of Bombay (Panaji-Goa Bench) defined the term “Information” as under: “The definition of information ‘cannot include answers to the question ‘why’ as that would be asking for a justification. The public information authorities cannot be expected to communicate to the citizen the reason why a certain thing was done or not done in the sense of justification because the citizen makes a requisition for information. Justifications are a matter within the domain of adjudicating authorities and cannot properly be classified as information.”

7. I have perused the Order of P.I.O. as well as of F.A.A. I do not find any infirmity in the Order.

It is seen that the Appellant sought information i.e. “detailed information as to on what basis the said was transferred” What is sought is detail information as to on what basis it was transferred. Therefore the Appellant cannot seek explanation as to the basis it was transferred. At the most the Appellant can get information regarding the Order i.e. if there was any order to transfer to ‘D’ Court. If the same is available on record then Appellant is entitled to the same. However the Appellant cannot question or demand the basis on which it was transferred. Regarding certified/true copies the same can be granted by complying with the required rules and procedures prescribed by the Competent Authority.

8. In view of all the above, I pass the following Order:-

ORDER

Appeal is partly allowed. The Respondent No. 2 is hereby directed to furnish information as to the order, if any, to transfer the said suit to the 'D' Court within 20 days from the receipt of this Order.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 23rd day of January, 2012.

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

