

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 61/SIC/2011

Shri Nitin Y. Patekar,
369, Oshalbag, Dhargal,
Pernem - Goa

.... Appellant

V/s.

1) Public Information Officer,
Mrs. P. Arlekar,
Dy. Director of Administration,
P.W.D., Altinho,
Panaji - Goa

.... Respondent No. 1.

2) First Appellate Authority,
V.P. Lawande,
Superintendent Surveyor of Work,
SSW P.W.D., Altinho,
Panaji - Goa

... Respondent No. 2.

Appellant in person.

Ms. Valida Rebello, representative of Respondent No. 1.

J U D G M E N T
(13.02.2012)

1. The Appellant, Shri Nitin Y. Patekar, has filed the present Appeal praying that the Appeal be allowed and Respondent No. 1 be directed to furnish the information duly attested; that Respondent No. 1 may be directed to pay appropriate fine as applicable and Respondent No. 1 be recommended for disciplinary action under Service Rules as applicable.

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

That the Appellant vide application dated 24.11.2010 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (PIO)/Respondent No. 1. That the Appellant received a letter dated 06.12.2010 from Respondent No. 1 and again letter dated 13.12.2010 from Respondent No. 1. That on 29.12.2010 Appellant filed Appeal before First Appellate Authority for not furnishing information. That during the hearing of the Appeal Appellant received letter from Respondent No. 1 dated 18.01.2011. By Order dated 20.01.2011 First Appellate Authority (FAA)/Respondent No. 2 disposed the

Appeal. It is the case of the appellant that the information is not furnished in time. Being aggrieved the Appellant has preferred the present appeal.

3. The Respondent resists the Appeal and the reply of Respondent No. 1 is on record. It is the case of the Respondent no. 1 that the Appellant had requested to furnish information relating to Dhargal Assembly Constituency such as date-wise amount sanctioned/transferred, provision/remarks/cabinet decision under which the fund has been transferred from Directorate of Panchayat, details such as resolution, name of the works, estimate, approvals, fund sanctioned, work order, M.B and payments made in respect of each work carried out by using the fund so transferred, etc. That since the information was not available with the Respondent No. 1 the application dated 23.11.2010 of the Appellant was forwarded to the Joint Director of Accounts, P.W.D., presuming that the information required by the Appellant would be available with him. That the JDA, PWD, vide his letter dated 13.12.2010 has informed that the information regarding funds transferred from Directorate of Panchayat since 01.06.2007 till 13.12.2010 was not available with the Office of JDA, PWD. That vide letter dated 24.12.2010 the Respondent No. 1 informed the Appellant that the information was not available and he was requested to obtain the same from the Directorate of Panchayat, Panaji. According to Respondent No. 1, Appeal is liable to be dismissed.

4. Heard the arguments of the Appellant and Ms. Valida Rebello, representative of the Respondent No. 1.

Appellant referred to the facts of the case in detail. According to the representative of the Respondent No. 1 the information sought is not available with them.

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 Appellant, vide application dated 24.11.20100 sought certain information. The information was regarding funds transferred from Directorate of Panchayat and other things. By reply dated 06.12.2010 the P.I.O./Respondent No.1 herein forwarded the same to Joint Director of

Accounts, P.W.D., Altinho, Panaji under Section 5(4) of the RTI Act. The copy was endorsed to the Appellant. By letter dated 13.12.2010 the Joint Director of Accounts informed the Respondent No.1 that the information sought is not available in their office. By letter dated 24.12.2010 the Appellant was informed that information was not available and he was requested to obtain the same from Directorate of Panchayat, Panaji.

Being aggrieved the Appellant preferred the Appeal before the First Appellate Authority. By Order dated 20.01.2011 the F.A.A. observed as under:-

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The Appellant stated that after hearing the submissions of the Respondent S.P.I.O. he has no further grievances in the matter.

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The undersigned also agrees with the submissions of the Respondent S.P.I.O. that the information could not be furnished to the Appellant since the same was not available in their office. Accordingly as agreed by both the parties the Appeal stands disposed off.”

6. In short the information is not available with the Public Authority. Under RTI Act the information that is not available cannot be furnished and consequently there is no obligation on the part of P.I.O. to disclose the same as the same does not qualify to be information 'held' by the Public Authority in terms of Section 2(j) of the RTI Act.

I have perused some of the rulings of the Central Information Commission. 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 can be invoked only for access to permissible information.

7. Regarding the aspect of delay. The reply/replies are in time so there is no question of delay as such.

8. In view of all the above, since information is not available the same cannot be furnished. Hence, I pass the following Order:-

ORDER

Since information is not available the same cannot be disclosed/furnished. The Appeal is disposed off.

The Appeal is accordingly disposed off.

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

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

