

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No. 159/SCIC/2011

Smt. Rukmini Pandurang Sawant,
R/o. H. No. 23, Vithadev, Sarvan,
Bicholim – Goa

.... Appellant

V/s.

1) Public Information Officer,
Mr. Bharat Mahale,
Secretary,
Village Panchayat Karapur-Sarvan,
Post Sanquelim, Bicholim – Goa

.... Respondent No.1

2) First Appellate Authority,
Arvind Mishra,
BDO, Taluka Bicholim,
Bicholim – Goa

.... Respondent No. 2.

Appellant in person.

Respondent No. 1 in person.

J U D G M E N T
(03.04.2012)

1. The Appellant, Smt. Rukmini Pandurang Sawant, has filed the present Appeal praying that the records and proceedings of the First Appeal from the office of Respondent No. 2 be called; that the present Appeal be allowed; and the Impugned Order dated 31.06.2011 passed by the Respondent No. 2 be quashed and set aside and that Respondent No.1 be directed to provide remaining information and documents as asked by the Appellant in sub-points (i), (vii), (viii), ix to xv of point no. 4 of application dated 24.05.2011 free of cost as provided under Section 7(6) of the RTI immediately; that penalty be imposed on the Respondent No. 1 as provided under Section 20 of RTI Act.

2. The brief facts leading to the present Appeal are as under:- That the Appellant has filed the application under Right to Information Act, 2005 ('R.T.I. Act' for short) from Respondent No. 1/Public Information Officer ('P.I.O.'). That the said application was received by Respondent on

27.01.2011. That Respondent No. 1 has provided some diminutive, misleading and incomplete information which consist of one covering letter dated 25.02.2011 and other 13 copies. That the information provided by Respondent No.1 in pursuance of the application dated 25.01.2011 is incomplete, misleading based on which the Respondent No. 1 is trying and misguiding and deceiving the Appellant. That the Respondent No. 1 has failed to provide information as asked. That being aggrieved by the same the Appellant preferred Appeal before First Appellate Authority (FAA)/Respondent No. 2. That notice was issued to the parties to remain present. That the Appellant alongwith her son-in-law, attended the hearing. That order was passed by the FAA. However, no full opportunity was given to the Appellant and that the Appeal was dismissed without even hearing the Appellant. Being aggrieved the Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. Alongwith the Appeal the Appellant has also filed an application for condonation of delay. In short according to the Appellant there is delay of 21 days in filing the present Appeal as the last date of filing was 31.06.2011 and the same is due to failure on the part of Respondent No. 2 to deliver the copy of the order passed in first appeal within time even after filing application to that effect.

4. Respondent No. 1 resists the application and the reply is on record. In short it is the case of Respondent No. 1 that as per request of Smt. Rukmini P. Sawant Respondent No. 1 has issued all the information within time. That application was received on 27.01.2011 and the information which is available in their custody was furnished on 25.02.11. According to the Respondent No. 1 the Appeal is liable to be dismissed.

5. It is seen from record that at one stage Appellant and his advocate remained absent. Notice was issued to the Appellant to remain present however Appellant and the advocate remained absent. Again on 07.02.2012 notice was issued to remain present on 27.02.2012. That day also Appellant remained absent. Still one chance was given however, Appellant remained absent, Respondent No. 1 was present. In any case I am proceeding on the basis of record.

Heard the Respondent. Respondent submits that all the available information has been furnished.

6. I have carefully gone through the records of the case and also considered the arguments advanced by the Respondent No. 1.

It is seen that, vide application dated 25.01.2011, the Appellant sought certain information consisting of (i) to (xvii) points/items. This application was received by Respondent No. 1 on 27.01.2011. By reply dated 25.02.2011 the Respondent No. 1 furnished the information. It appears that Appellant was not satisfied with the information. Hence he filed the Appeal before First Appellate Authority. By order dated 31.03.2011 the Appeal was dismissed.

According to the Appellant the information in respect of points No. (i), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv) of point No. 4 has not been furnished.

Regarding point No. (i) it is seen from the reply that the same is furnished.

Point No. (vii), (viii), (ix) and (x) are as under:

(vii) If any license or permission or NOC is not issued to the said Shri Sheikh and Smt. Maina Mahesh Gawali or Shri Mahesh Gawali by this office or if they have not applied for the same than please issue certified copy of letter or certificate stating the legality of the constructed wall and houses by them.

(viii) Certified copy of legal provision under which the said Shri Adam Sheikh and Smt. Maina Mahesh Gawali or Shri Mahesh Gawali were allowed to construct the said wall even

(ix) after receipt of the above said correspondence/objections by us and the memorandums by BDO, of Bicholim, in this office and without prior permission/consent of my family members the owners of the property bearing Survey No. 92/5 of Village Sarvan, on the boundary of which the above illegal constructions are done.

(x) Certified copy of information as to the set back area one should keep when he is constructing any structure from the boundary of the adjacent property of some other person and the legal provision under which it is provided.

It is seen that in the reply it is stated that no license or NOCs or permission was granted by the Panchayat. In view of this the question of granting information at point (vii) does not arise. Besides the information seeker is entitled for information as is held in material form by the Public Authority. Besides what is sought appears to be opinion of the P.I.O. about legality of the same. Same is true in respect of point No. (viii) and (ix). The PIO has stated that Panchayat has not received any application seeking permission nor they granted the same. Regarding point (x) it appears that the Appellant wants the PIO to give specific provision of law which would apply to the scenario he has mentioned. He is effectively seeking an interpretation of the law or opinion of the PIO which is not 'information' as defined under RTI Act.

In Shri R. K. Mirg v/s. Ministry of Home Affairs (F.No. CIC/AT/A/2006/00154 dated 03.11.2006) it was held as under:-

“6.

Section 2(f) of the RTI Act allows an appellant access to information “held” by a public Authority. Since Rules and Acts were already in public domain these were freely accessible to any one who wanted to have them and hence could not be said to be “held” by any public authority. It is, therefore, not open to the Appellant to seek “interpretation” of law or rule from the public authority disguised as seeking information.

7. In overall consideration of the matter before the Commission, it is held that there is no responsibility cast on the Respondents to “interpret” any law or rule for the Appellant. The appeal is rejected.”

Regarding point No. (xi), (xii) and (xiii) the same has been already furnished as available.

Point No. xiv and xv are as under:-

(xiv) The certified copy of information and legal base, based on which this office is supporting the illegal construction of the boundary wall constructed by the said Shri Adam Sheikh and Smt. Maina Mahesh Gawali or Shri Mahesh Gawali, on the boundary of our property bearing Survey No. 92/5 of Village Sarvan.

- (xv) Certified copy of specific (section, article of specific provision from any Act or law) legal provision under which this office can take cognizance of the illegal construction going on or done by any person in jurisdiction of this Panchayat.

Under RTI Act the PIO is bound to provide the information held by the Public Authority, but he is not required to offer explanation or opinion in confirmation or denial of the impressions by an Appellant.

In Arun Kumar v/s Department of Economic Affairs (F. No. CIC/AT/A/2008/01583 dated 12.05.2009) it was observed:-

“Given the subject-matter of these two queries, it is not possible to allow disclosure of any information pertaining to them as both these queries cannot be related to any identifiable information within the meaning of Section 2(f) of the RTI Act. Appellant is not authorized to seek respondents’ interpretation of Acts and Rules and instructions nor can he question whether an order was issued properly and whether the authority issuing certain order was invested with the power to issue it. Such queries are beyond the scope of the RTI Act.

There shall be no disclosure obligation for these items of queries

6. Another aspect is that Appellant contends that FAA did not give proper opportunity to be heard and secondly copy was not given in time.

I have perused the order as well as copy of the Roznama on record. As per order on record it appears that parties were heard. In any case principles of natural justice requires that parties should be given fair opportunity. Copy of the order also should be given within a reasonable time.

7. I have perused the application seeking the information and also information furnished. To my mind the PIO should furnish the information properly as asked by the party concerned. The way information furnished it is not clear which item is answered the way it was asked. It is not open to the PIO to provide the information in whatever form he wishes, but instead he should see what applicant has asked and as to how he would like the information to be provided. Where the information sought is question-wise,

response also should be point-wise in response to the questions. If this method was followed it would have clarified most of the queries. In any case PIO to bear the same in mind in future and provide the information accordingly.

8. As pointed above, the Appellant has also filed an application for condonation of delay. The ground set out constitutes a sufficient cause and therefore the delay is liable to be condoned.

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

ORDER

No intervention of this Commission is required as available information is furnished. The Appeal is disposed off.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 03rd day of April, 2012.

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