

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.85/SCIC/2012

Shri Subhash P. Narvekar,
R/o.Mapusa - Goa

... Appellant

V/s.

1. The Public Information Officer,
Deputy Director (North),
Directorate of Panchayat,
Panaji-Goa

2. The First Appellate Authority,
Directorate of Panchayats,
Panaji - Goa

... Respondent

Appellant present.

Adv. Shri G. N. Mishra for appellant present.

Respondent No.1 present.

J U D G M E N T
(26/07/2012)

1. The Appellant, Shri Subhash P. Narvenkar, has filed the present appeal praying that the respondent No.1 be directed to furnish the information sought and that compensation be paid to the appellant for mental torture and agony being a senior citizen; for costs of Rs.20,000/- and any other punitive and deterrent action including penalty under the Act.

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

That the appellant, owns a plot of land U/s. No.165/1 Parra Carascowaddo, Bardez, Goa. That on a part of the said land there is a structure under dispute and on the first floor (rear) portion of the same structure another floor is added absolutely illegally. That the appellant complained vide letter dated 14/9/9 to the Parra Panchayat regarding the said illegal construction but the Panchayat gave an evasive reply dated 15/10/2009 and failed to

initiate action. That thereafter appellant appealed to B.D.O. and then to Director of Panchayat etc. Appellant also states about conducting of inspection, about report etc. in the memo of Appeal. That thereafter the appellant, vide letter dated 2/5/2011, 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.1. That the Dy. Director/P.I.O. gave a false information that the information as regards A, B, C is not available vide letter dated 26/5/2011. Being not satisfied the appellant has preferred an appeal before the First Appellate Authority(F.A.A.). That the F.A.A passed the order without giving proper notice to the appellant and thereby confirming the arbitrary stand taken by the P.I.O. That the appellant brought to the notice of F.A.A. about the defect in service of notice but the F.A.A. ignored the same and acted against natural justice by pronouncing the said order without hearing the appellant. Being aggrieved the appellant has preferred the present appeal.

3. The respondent No.1 did not file any reply as such but he advanced arguments.

4. Heard Adv. Shri G. N. Mishra for appellant and respondent No.1 in person.

Adv. Mishra referred to the facts of the case in details. According to him the information ought to have been furnished.

During the course of his arguments respondent No.1 referred to the reply sent by P.I.O.

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 2/5/2011, the appellant sought certain information which is as under:-

‘Ref. 2 letters

- A. Kindly inform me reasons for not taking action till this date on my above two letters dated 11/1/2011 and 14/03/2011
- B. Copy of the action taken against (1)Mrs. Lalita V. Narvenkar and (2)the Secretarry Parra village Panchayat for not submitting necessary documents/papers as referred in your letter No.15/02/546/DDPN/BAR/PARRA/10/8915 dated 16/12/2010
- C. Why no action has been taken to demolish the illegal structure as declared by the B.D.O. vide his report to your office by letter No.17/BDO-Bar/EOVP/1/2010-11/5731 dated 29/11/2010.”

By reply dated 25/05/2011 the P.I.O./respondent No.1 informed the appellant that the information sought by him as regards A, B and C of his application is not available in their office. Being aggrieved the appellant preferred an appeal before the First Appellate Authority. By order dated 17/8/2011 the F.A.A./respondent No.2 disposed the appeal on the ground that information has been furnished.

6. The grievance of the appellant is that he was not heard by the F.A.A. I have perused the averments made in respect of notice issued. Though the provision does not speak of hearing yet the principles of natural justice require that parties should be heard. F.A.A. to see that parties are heard and notice is served well in time.

7. Now coming to the aspect of information. It is to be noted here that Sec.2(j) provides only information held by or under the control of any public authority. Sometime queries put cannot be answered.

It is held (as decided by C.I.C. in K. Anand Kini V/s.Canara Bank on 10/5/2007) 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 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.

The Hon'ble High Court of Bombay (Panaji Goa Bench) in Celsa Pinto V/s. Goa State Information Commission (2008) 24 CLA – BL 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 matters within the domain of adjudicating authorities and cannot properly be classified as information.”

In view of this position request of the appellant as far as item A and B is concerned cannot be considered.

However if any action has been taken etc. it is left to the P.I.O. to consider and furnish if he so desires.

Coming to item B. The appellant is seeking about action taken under R.T.I. The same can be furnished and therefore the P.I.O. will have to furnish the same.

9. Regarding the delay. The application is dated 2/5/2011 and reply is dated 25/05/2011. The same is within time.

The appellant also filed an application for condonation of delay. In any case considering the facts of the case, delay is condoned.

10. In view of all the above, I pass the following order.

ORDER

The appeal is partly allowed. The respondent No.1/P.I.O. is hereby directed to furnish information to the appellant in respect of item No.B of his application dated 2/5/2011 within 20 days from the date of receipt of this order.

Regarding item A and C the same cannot be granted the way it is asked. However it is open to the P.I.O. to consider and inform if any action is taken

The appeal is, accordingly, disposed off.

Pronounced in the Commission on this 26th day of July, 2012.

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