

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.47/SCIC/2012

Dr. Kalidas Prakash Vaigankar,
H. No.138, Rua De Maria,
Sancoale, Cortalim, Goa

... Appellant.

V/s.

1. Smt. Paula Fernandes,
Public Information Officer,
Public Health Department,
Secretariate, Porvorim, Goa
2. Gurudas P. Pilarnekar,
First Appellate Authority,
Jt. Secretary (GA),
Secretariat, Porvorim, Goa

... Respondents

Appellant present.

Respondent No.1 present.

Respondent No.2 absent.

J U D G M E N T
(11/07/2012)

1. The Appellant, Dr. Kalidas Prakash Vaigankar, has filed the present appeal praying that the directions be issued to furnish the information for the application dated 24/9/2011 without further delay; that fines be imposed with effect from 14/12/2011 @250/- per day till correct information is furnished by respondent No.1; that directions be issued to the respondent No.1 to pay a compensation of Rs.5000/- to the appellant for subjecting the appellant to unnecessary hardship in obtaining the information; and that statements of respondent No1 and 2 be recorded on oath regarding information etc.

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

That the appellant, vide an application dated 24/9/2011, 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 respondent No.1 by reply dated 24/10/2011, provided copy of pages N/5 to N/8 from the file No.44/16/2006-1/PHD and some letters but she did not provide the requested information. That it was incomplete and misleading information. Being aggrieved the appellant preferred the appeal before the First Appellate Authority(F.A.A.). That by order dated 14/12/2011 stating that the entire information exists in the pages N/1 to N/8 of the file No.44/16/2006-1/PHD and directed the respondent No.1 to furnish the copies of pages N/1 to N/4 from file No.44/16/2006-1/PHD to the appellant. That the respondent No.1 by her letter dated 21/12/2011 provided copies of pages N/1 to N/4 and it was indicated in the covering letter that the pages are from file No.44/16/2006-I/PHD. But it is interesting to note that the appellant did not come across the information which the respondent No.2 had seen and confirmed that it existed in the file notings at page N/1 to N/4. It is the case of the appellant that the requested information was not available in the copies provided by the respondent No.1. That the information furnished was misleading. If the respondent No.2 is believed then it appears that the respondent No.1 has provided fabricated and false copies. Being aggrieved by the same the appellant has preferred the present appeal on the grounds as set out in the memo of appeal.

3. The respondent No.1 resists the appeal and the reply of the respondent No.1 is on record. In short it is the case of the respondent No.1 that the application seeking information dated 24/9/2011 reached the office of respondent No.1 on 3/10/2011. That the respondent No.1, vide letter dated 24/10/2011, supplied to the appellant copies of noting from file No.44/16/2006-1/P.H.D. at pgs. N/5-N/8 and the letters of even number dated 4/3/2011, 26/4/2011; 17/10/2011 and letter No.DHS/ADM.Per-Gaz-925/2011/42 dated 5/4/2011 of the Director of Health Services.

That the appellant being not satisfied preferred an appeal before First Appellate Authority in which the First Appellate Authority upheld the decision of the P.I.O. and only observed that “since the copies of notings from N/5 to N/8 are already provided to the appellant the respondents may provide the copies of notings from N/1 to N/4 also to the appellant.” That in pursuance to the order dated 14/12/2011 made by the F.A.A. the P.I.O. vide letter dated 21/12/2011 supplied copies of the notings from file No.44/16/2006-1/PHD at pages N/1-N/4 to the appellant. That the said information has been furnished to the appellant within the stipulated time limit and hence there is no delay. That Right to Information means only access to information which is actually held or in existence with the public authority at a particular time. That the details contained in the said notings were the information available with the public Authority when the appellant applied for the information. That the appellant has also been supplied the letters. That the P.I.O. has to furnish the information to the information seeker in the form it is available with the Public Authority and that the P.I.O. is not supposed to create the information or give his interpretation or comments. The respondent No.1 denies that appellant has been supplied incomplete and misleading information. Respondent No.1 also denies about suppressing of information. In short, according to the respondent No.1 all information has been furnished. According to respondent No.1 the appeal is liable to be dismissed.

4. The appellant has also filed an additional written submission which is on record. According to the appellant he came to know about the new facts which are as under :-

(i) that the respondent No.1 is the Public Information Officer of “Public Health Department” in short “PHD”.

(ii) the information which is provided, consists of eight pages 1/N to 8/N of the file notings.

(iii) the said documents are the documents of “Public Health Department”.

(iv) the appellant had written two letters

(a) Letter to the “Chief Minister of Goa”

(b) Letter to the “Chief Secretary of Goa”

(v) “Public Health Department” is completely different Public Authority, it does not handle the matters concerning the office of Chief Minister of Goa and Office of Chief Secretary of Goa

(vi) “Public Health Department is not responsible to handle the matters of the Office of Chief Minister of Goa and the Office of the Chief Secretary of Goa.

(vii) there exists P.I.O. who is assigned to deal with matters relating to Right to Information Act for both the office of the Chief Minister of Goa and Office of the Chief Secretary of Goa.

(viii) that the application for information was not addressed to Public Health Department

(ix) the application for information reached to the Public Health Department because of an error.

It is further the case of the appellant that the respondent No.1 Smt.Paula Fernandes is innocent and she acted diligently and is not responsible to provide the information which is not available with her.

5. Heard both sides and perused the records.

It is seen that by application dated 24/9/2011 the appellant sought certain information from Public Information Officer, Secretariat, Porvorim, Goa. There is nothing on record to show

that how this letter/application reached to the respondent No.1. However in the reply filed at para 1 the respondent No.1 states that the said application was forwarded to this P.I.O. by the Sr. Suptd. of Post Office, Goa Division, Mapusa, Goa which reached to the office of respondent No.1 on 3/10/2011. By reply dated 24/10/2011 the respondent No.1 furnished copies of the noting at pgs.N/5 – N/8 and the letters. Being not satisfied the appellant preferred appeal before First Appellate Authority and as per the order of F.A.A. furnished the information.

It is to be noted here that whatever information was available has been furnished. It is to be noted here that under R.T.I. whatever information available with the Public Authority is to be furnished or the information as held is to be furnished . The Right to Information Act can be invoked only for access to permissible information.

5. It is now the case of the appellant that the application was not addressed to the respondent No.1 and the same reached to the Public Health Department because of an error.

It is admitted that information which the appellant wanted is not available with the public authority/respondent No.1.

It is pertinent to note Sec.6 of the R.T.I. Act which is as under:-

“6. Request for obtaining information

1. Any person who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made accompanying such fee as may be prescribed to.

(a)

(b)

Specifying the particulars of the information sought by him or her.

Provided that
.....

2.

3. *Where an application is made to a Public Authority requesting an information, -*

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority.

The Public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other Public authority and inform the applicant immediately about such transfer;

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

7. Sub-Section (1) of Section 6 expressly requires that a person who desires to obtain information under the Act shall make a request along with the prescribed fee to the P.I.O. of the concerned Public Authority specifying the particulars of the information. Sub-section(3) carves an exception to the requirement of sub-sec(1). As per the same where a Public Authority, to whom an application for information is made finds that information demanded is not with it but is held by some other authority, it is duty bound to transfer the application for information to the concerned authority under intimation to the applicant/information seeker. In my view sub-section (3) of Sec.6 cannot be read in isolation, sub-section (1) of Section 6 being the main section. Intention of the Legislature appears to be good considering the R.T.I. Act is a people friendly Act. The pure objective behind enacting this provision is perhaps to lessen the travails of an information seeker, lest he is lost in the labyrinth of procedural technicalities.

In any case the respondent No.1 can transfer the same to the concerned Public Authority. Respondent No.1 states that she no longer is the P.I.O. In any case, the present P.I.O. can transfer the same.

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

ORDER

The appeal is partly allowed. The P.I.O. Public Health Department, Secretariat, Porvorim, is directed to transfer the application of the appellant dated 24/9/2011 under Sec.6(3)(ii) of the R.T.I. Act to the concerned Public Information Officer or Public Information Officers, within 5 days from the receipt of this order.

The appeal is, accordingly, disposed off.

Pronounced in the Commission on this 11th day of July, 2012.

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