

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 11/SIC/2011

Shri Cirilo Vales,
H. No. 78, Duncolim,
Seraulim,
Salcete - Goa

.... Appellant

V/s.

1) Public Information Officer,
Village Panchayat Seraulim,
Salcete – Goa

... Respondent.

Appellant in person.

Respondent alongwith Adv. Smt. H. Naik.

J U D G M E N T
(28.06.2012)

1. The Appellant, Shri Cirilo Vales, has filed the present Appeal praying that the Commission be pleased to take cognizance of the purported submissions made on behalf of the Respondent who knowingly has not given the information; that the respondent has neglected his duties and caused hardship to the Appellant and that the Respondent be penalized to compensate the Appellant.

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

That the Appellant, vide his application dated 16.08.2010, 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 as the Respondent had not complied to the request of the Appellant, within the stipulated time as per Section 7(1) of the R.T.I. Act, the Appellant preferred an appeal before the First Appellate Authority ('F.A.A.'). The F.A.A. by order dated 04.11.2010 directed the P.I.O./Respondent to furnish the information within 10 days from the date of the order. It is the case of the Appellant that although the Respondent had admitted during the course of hearing to make the information available within a period of 10 days he

did not provide all the information. Being aggrieved the Appellant has filed the present Appeal.

3. The Respondent resists the appeal and the reply of the Respondent is on record. The Respondent No. 1 admits of having received the application, however, denies that the Respondent had not complied to the request of the appellant within stipulated period as per Section 7(1) under R.T.I. Act, 2005. Respondent also admits about First Appeal and the order passed, however, denies that Respondent did not comply with the order. It is further the case of the Respondent that the entire information was kept ready in the office of the Respondent but the Appellant failed to collect the same inspite of the oral information given to him to collect. That even otherwise information at Serial No. 1, 3 and 5 cannot be furnished to the Appellant in terms of the R.T.I. Act, as the same is not permissible. That the Appellant is in the habit of filing false and mischievous applications.

4. Heard the arguments. The Appellant argued in person and the learned Adv. Smt. H. Naik argued on behalf of the Respondent.

The Appellant referred to the facts of the case in detail. According to him information regarding 2, 4 and 5 is given and regarding 1 and 3 not given. He next submitted that inspection of material not given. According to the Appellant it appears that there is something to hide.

During the course of the arguments Adv. Smt. H. Naik submitted that there is no mention of make of sample, etc. and besides there is no provision of giving sample of material. According to her Respondent cannot provide the sample and the Respondent cannot store and keep and that there is no provision to give samples. She next submitted that whatever available information is furnished.

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 not in dispute that application was filed seeking information. It is also not in dispute that First Appeal was filed and order directing to furnish information was passed.

According to the Appellant information was not furnished within 30 days and hence he filed First Appeal. Appellant further states that no information is provided in pursuance of the order of F.A.A. This is disputed by Adv. for Respondent. According to her the Appellant did not collect the information.

During the course of arguments Appellant states that the information at Sr. No. 2, 4 and 5 is furnished.

6. Now I shall refer to the information that is not furnished which is as under:-

- (1) One sample/model of all the Electrical materials supplied by the Dealer Naik Electricals as per the tender published by V.P. of Seraulim vide Ref. No. VP/S/85/2010-11 dated 12.05.2010 specifying the make of each sample.
- (2) Information furnished.
- (3) Inspection of all the Electrical material supplied by the Dealer Naik Electricals for the tender published by V.P. Seraulim with Philips make vide Ref. No. VP/S/85/2010-11 dt. 12.05.2010.
- (4) Information furnished.
- (5) Information furnished.

According to Adv. for Respondent information sought under point No 1 and 3 does not come within the purview of R.T.I. Act.

Under Section 2(j) "Right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to –

- (i) Inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in computer or in any other device;

Perusal of the above definition makes it crystal clear that 'Inspection of work' and 'samples' are covered by the 'Right to information.'

I have also perused some of the rulings of Central Information Commission on the point.

(i) In *Shri M. L. Sharma v/s. Central Board of Direct Taxes* (F. No. CIC/AT/A/2007/01377/LS, decided on 13.01.2010) it was held that samples are 'information' to which the Appellant is entitled under Section 2(j) of the R.T.I. Act.

(ii) In *Shri B. P. Srivastava v/s. Dy. Commissioner Shahadara North Zone, MCD* (Appeal No. CIC/W.B/A/00262 and 263 dated 22.05.2006) it was held that in keeping with the law, therefore, samples of the material of all works which have been completed or under completion as sought by the Appellant will be provided to the Appellant Shri Srivastava on mutually acceptable dates and specific materials agreed upon.

7. This Commission inquired with the Respondent whether samples are available and he replied in the negative. Appellant too agrees that inspection may now not be possible.

8. Coming to the aspect of delay. According to the Appellant there is delay. But according to the Adv. for Respondent No. 1 there is no delay as such. Advocate for Respondent further states that Appellant refused to collect information.

I have carefully gone through the records. It is seen that information sought is by letter dated 16.08.2010. The reply furnished is 12.08.2010. This date is not certainly 12.08.2010 so there is a mistake. It is pertinent to note that this letter is produced by Appellant himself. The Respondent in reply does not mention about date. However it needs clarification in view of the order of F.A.A. In any case the Respondent should be given an opportunity to explain about the same in the factual backdrop of this case.

9. In view of the above, information in respect of point at Sr. No. 1 and 3 cannot be furnished as the same is not available. Respondent is to be heard on the aspect of delay. Hence, I pass the following Order:-

ORDER

Appeal is partly allowed. No intervention of this Commission is required as information is not available.

Issue notice under Section 20(1) of the Right to Information Act, 2005 to the P.I.O./Respondent to show cause why penal action should not be taken against him for causing delay (if any) in furnishing information. The explanation, if any, should reach this Commission on or before 14.09.2012. The P.I.O./Respondent shall appear for hearing.

Further inquiry post on **14.09.2012 at 10:30a.m.**

The Appeal is, accordingly, disposed off.

Pronounced in the Commission on this 28th day of June, 2012.

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

