

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 154/SIC/2011

Shri G. D. Phadte,
898, Nila Niwas, Alto Torda,
Porvorim,
Goa – 403 601 Appellant

V/s.

- 1) Public Information Officer,
Secretary,
Pilerne-Marra Village Panchayat,
Bardez - Goa ... Respondent No.1.
- 2) Block Development Officer,
Bardez,
Mapusa – Goa ... Respondent No. 2.

Appellant in person.
Respondent No.1 alongwith Adv. N. Bhartiya.

J U D G M E N T
(25.06.2012)

1. The Appellant, Shri G. D. Phadte, has filed the present Appeal praying that P.I.O./Respondent No. 1 be directed to provide the information sought after inspection; that P.I.O. be directed to refund the fees collected knowingly contrary to Section 7(6); that penalty be imposed on the P.I.O. for delay in furnishing information and that Appellant be compensated.

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

That the Appellant, vide his application dated 24.03.2011, 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 P.I.O. denied information. That the P.I.O. falsely stated that information is not available. That P.I.O./Respondent No. 1 contradicted own statement stating the matter is not related to R.T.I. Act, 2005 hence cannot be provided to Appellant and that he also made other false claims. Being not satisfied the Appellant preferred an appeal before the First Appellate

Authority ('F.A.A.)/Respondent No. 2. That the F.A.A./Respondent No. 2 stated that reply of P.I.O. was not proper reply as per R.T.I. Act with documents within 7 days. That the P.I.O. failed complying the order dated 15.06.2011 of F.A.A. That the P.I.O. sent letter to collect the information but did not provide information free of charge. Besides P.I.O. refused to provide letter dated 28.12.2011 and plan found on inspection. Being aggrieved the Appellant has filed the present Appeal.

3. The Respondent No. 1 has filed the written statement in which the case of Respondent No. 1 is fully set out. In short it is the case of the Respondent No. 1 that the Appellant had filed the application on 24.03.2011 in the office of the village Panchayat Pilerne Marra. That a reply was given to the Appellant on 20.04.2011 a copy of which is furnished by the Appellant. That the letter dated 20.04.2011 gives factual information. That the requisitioned information was awaited from the official of the Town and Country Planning Department, Mapusa-Goa. that meanwhile the Appellant filed an appeal on 27.04.2011 before the First Appellate Authority ('F.A.A.)/Respondent No. 2. That the F.A.A. passed the order on 15.06.2011 to give proper reply and the documents to the Appellant. That meanwhile the P.I.O. received the relevant information from the official of the Town & Country Department, on 16.06.2011. That the P.I.O. informed the Appellant accordingly vide his letter dated 17.06.2011. That the Appellant collected the information from the P.I.O. on 30.06.2011 paying an amount of Rs.10/- only. However the Appellant preferred the present Appeal. It is further the case of the Respondent No. 1 that the latest position is that the P.I.O. has furnished all the information to the Appellant as applied by him. The P.I.O. requisitioned information from the Town & country Planning Department on 16.06.2011 and he immediately intimated the Appellant to collect the necessary information vide his letter dated 17.06.2011. That the P.I.O. sent one more letter dated 22.06.2011 to the Appellant to collect the information. That the Appellant inspected the entire file and collected all the information on 30.06.2011 paying the necessary fees of Rs.10/- and simultaneously made a fresh request by making a remark on the office copy of the P.I.O.'s letter dated 17.06.2011 itself to provide him a copy of the P.I.O.'s letter dated 28.12.2011 and a copy of one unauthenticated plan furnished by a person who had made a complaint

against the Appellant on the file. That the same was not covered under application dated 24.03.2011. However, the aforesaid documents are furnished to him alongwith the written statement dated 07.10.2011 in respect of First Appeal No. 89/SCIC/2010 dated 03.05.2011. The Respondent denies the contents of para 2 of the Memo of Appeal. It is the case of the Respondent No. 1 that there is no specific description of any particular information required in the application dated 24.03.2011 to the P.I.O. Any how the P.I.O. complied with the order dated 15.06.2011 of the F.A.A. on 17.06.2011 by sending the necessary letter to the Appellant. In short according to the Respondent No. 1 information is furnished and that there is no delay in furnishing the information.

4. Heard the Appellant and Adv. N. Bhartiya for Respondent No. 1. Written arguments of Appellant and the Respondent No. 1 are on record.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties and also considered the written arguments of the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is seen that the Appellant, vide application dated 24.03.2011, sought certain information consisting of 3 points/items Sr. No. 1 to 3. Point NO. 1/Sr. No. 1 is regarding resolutions taken by Pilerne-Marra Panchayat on Appellant's letter dated 24.01.2010 and representation dated 27.12.2010 both addressed to the Sarpanch of the Pilerne-Marra V.P. Point No. 2 was regarding correspondence exchanged, actions proposed and initiated to remove illegal fence made by Krishna @ Amit Moham Goveker. Point No. 3 was regarding inspection of records. By reply dated 20.04.2011 the Respondent No. 1 informed the Appellant that information at No. 1(1) and (2) is not available with the Panchayat and being of local body the same is not related to R.T.I. and hence cannot be provided. He also informed about site inspection but no panchanama submitted. Information regarding point No. 2 was not provided as the same was not sought. Regarding inspection certain clarifications were sought. It appears that the same was not furnished. It is seen that this reply is in time. Being not satisfied the appellant preferred

an appeal before the First Appellate Authority/Respondent No. 2. By order dated 15.06.2011 the F.A.A./Respondent No. 2 observed as under:-

“..... I hereby order the Respondent to file proper reply in accordance with R.T.I. Act alongwith the documents if any within 7 days.”

By reply dated 22.06.2011 the P.I.O. informed the Appellant that information was kept ready and requested to collect the same. It appears from the said letter the Appellant inspected the file shown to him as per letter dated 22.06.2011. It is also mentioned “Kindly provide the copy of letter dated 28.12.2010 and plan on file”. This is dated 30.06.2011. I have also seen the letter dated 17.06.2011. As per the same it is mentioned that no resolution has been taken. It is also mentioned the V.P. Pilerne Marra has not proposed nor initiated action to remove illegal fence..... However some copies of documents were furnished. Inspection also was offered. There is endorsement of having received the copies by charging Rs.10/- in violation of Section 7(6). It is also mentioned that “refused to give copies of letter dated 18.12.2010 and plan on file inspection.”

Now the order of F.A.A. was passed on 15.06.2011 and the same was to be complied within 7 days. Accordingly letter was sent on 22.06.2011. Of course as per endorsement the Appellant received on 17.06.2011. In any case there is no delay as such. However P.I.O. should take note that he should not wait for the last day but should post in time.

6. The prayer of the Appellant is to provide denied 2 page information sought after inspection.

7. Before proceeding to this prayer and looking at the memo of Appeal as well as written arguments I must say that a combine reading of Section 2(f), 2(i) and 2(j) of the R.T.I. Act would show that a citizen is entitled for disclosure of information which is in material form with the public Authority that is the information available in any file or the document and the like and the information and right to seek does not include, opinions, explanations, etc.

It is pertinent to note that P.I.O. not required to collect, compile or create information for the information seeker but he is expected to provide the information available in material form.

In *Shri Vibhor Dileep Baria v/s. Central Excise and Custom Nashik* (Appeal No. CIC/AT/A/2006/00588 dated 30.11.2006) it is observed in para 11 and 14 as under:-

“11. Right to Information Act confers on all citizens a right to access information and this right has been defined under section 2(j) of the said Act. An analysis of this section would make it clear that the right relates to information that is held or under the control of any public authority. If the public authority does not hold information or the information cannot be accessed by it or under section 2(f) or if the information is non-exist, the public authority cannot provide the same under the Act. The act does not make it obligatory on the part of the public authority to create information for the purpose of its dissemination”

“14. Thus information would mean any material in existence and apparently it cannot mean and include something that is not in existence or to be created.

.....
.....
.....”

8. Coming to the prayer in the Appeal it is to be seen whether information sought after inspection can be given. Normally what is sought in the initial application is to be provided. No additional information can be given at Appellate stage. The eloquent reply to this is found in the rulings of Central Information Commission.

(i) In *Lalit Khanna v/s. Department of Information Technology* (Appn. No. 319/CPB/2006/0043 dated 14.03.2007) where without going into the merits of the case whether the C.P.I.O. cited the correct provisions for denying the information, the Commission observed that the fact remains that the appellant cannot seek further information in his subsequent letters other than the one which he has sought in his

first application. There is no obligation on the part of the C.P.I.O. to provide the information to the Appellant.

(ii) In *Ashish Pradhan v/s. Ministry of Environment and Forests* (Appl. No. CIC/WB/A/2006/00463 dated 14.03.2009) where extra points raised in the appeal cannot be treated as part of the appeal, the Commission observed that appellant request for the information be treated as an application and all information not exempted from disclosure be made available to him on payment of fees.

In this case information was not sought in the initial application.

(iii) In *G. Srinivasan v/s. NTPC Limited* (Appeal No. ICPB/A-12/CIC/2006 dated 05.04.2006) it has been held that at the Appellate stage an appellant cannot ask for additional information which had not been sought from the C.P.I.O.

(iv) In *Ms. Navneet Kaur v/s. Department of Council (ESC)* (Appeal No. ICPB/A-8/CIC/2006 dt. 18.05.2006) it is observed as under:-

“It is to be noted that this Commission could only inquire whether the information sought in the original application has been provided by the C.P.I.O. or not and cannot consider additional information sought during the hearing. In the application as well as in the original appeals before the Commission, her request was for a copy of the enquiry report and information on action taken on the reports.”

In his written statement at para 6 the Respondent No. 1 submits that the said documents are furnished to the Appellant alongwith written statement dated 07.10.2011 in respect of his First Appeal No. 89/SCIC/2011 dated 03.05.2011. This is again repeated at the end of para 7.

9. Coming to the aspect of delay. As observed above there is no delay as such. Since it is held that there is no delay the question of refund does not arise.

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

ORDER

No intervention of this Commission is required. The Appeal is disposed off.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this **25th day of June, 2012.**

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

