

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 47/SCIC/2011

Shri Andrew Menezes,
898, Nila Niwas, AT3, Campo Verde,
Kerant,
Caranzalem – 403 001 Appellant

V/s.

1) Shri D. S. Morajkar,
Dy. Registrar of Cooperative Societies,
Govt. of Goa,
'Sahakar Sankul', 4th & 5th Floor,
Panaji – Goa – 403 001 ... Respondent No.1.

2) Shri P. K. Velip Kankar,
First Appellate Authority,
Government of Goa,
'Sahakar Sankul', 4th & 5th Floor,
Panaji – Goa ... Respondent No. 2.

Appellant in person.

Respondent No.1 in person.

J U D G M E N T
(20.07.2012)

1. The Appellant, Shri Andrew Menezes, has filed the present Appeal praying that the P.I.O. be directed to provide the information for all the numbers of paras/points sought; decide and establish the basic obligation of accountability and on whom lies the responsibility for providing information; fix responsibility and take exemplary penal action against the P.I.Os of the Office of the Registrar/Asst. Registrar of Co-operative Societies under Section 20(1) and 20(2) for violating Section 7(1), 7(8)(ii) and 7(8)(iii); Appellant be compensated and other reliefs as mentioned in the Memo of Appeal.

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

That the Appellant, vide application dated 09.08.2010, 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 the Respondent No. 1 responded by letter dated 31.08.2010 and 22.09.2010.

That the replies provided do not make available any relevant information; thus willfully denying correct information to the Appellant. Being not satisfied the Appellant preferred an appeal before the First Appellate Authority ('F.A.A.'). However the F.A.A. has not passed any order furnishing of information asked for. It is the case of the Appellant that he is seeking information in connection with administrative and quasi judicial decisions taken by the functionaries of the Public Authority as provided for under R.T.I.

Being aggrieved the Appellant has filed the present appeal on various grounds as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and reply of the Respondent No. 1 is on record. In short it is the case of Respondent No. 1 that all the information available on record with regard to application containing 36 points has been provided to the Applicant and clarified in the best possible way during the course of hearing in the First appeal. That the Respondent No. 1 is functioning from the Head Office and is a supervising authority in respect of the Zonal Offices including Office of the Asst. Registrar of Cooperative Societies Central Zone, Panaji. That the main issues/information sought is in respect of housing societies coming under the jurisdiction of Office of Central Zone. As such applications of the Applicant received by the Respondent No. 1 were forwarded to the Asst. Registrar of Cooperative Societies, Central Zone, wherever applicable with the direction to provide the information sought by the Applicant. That the Respondents have shown all the liberty and provided information and in case of any further information/record he was requested to visit the office on any working day vide letter dated 22.03.2010. That the statement of the Appellant that the First Appellate Authority has not passed any Order regarding furnishing the information asked for, is incorrect and misleading. That the final order was passed on 15.12.2010. That the Respondents (Department) even exercised its power and gone to the extent of ordering inquiry/inspection by deputing two Senior officials as the Applicant was not satisfied with first inquiry officer and provided the information brought on record free of cost while otherwise as provided under Section 77 of Goa Cooperative Societies Act, 2011 "the cost and expenses of the inquiry shall be met by such persons at whose instance the inquiry is conducted". That

the points raised in the Appeal are inconsistent and not covered under the definition of R.T.I. Act, 2005. It is further the case of the Respondent No. 1 that The Appellant is unnecessarily in the name of R.T.I. Act, repeatedly prefers appeal for information and disproportionately diverts the resources of the public Authority which has become detrimental to the safety and preservation of records. That the entire files and records were kept open to him and provided all the information as requested. That inspite of this the Appellant has approached the Commission using R.T.I. as a tool to pressurize the Public Authority and caused inconvenience to the public.

4. Rejoinder of the Appellant is on record.

5. Heard the arguments of the Appellant as well as the P.I.O./Respondent No. 1. Both sides advanced elaborate arguments.

In short according to the Appellant information is not furnished and he pointed what is not furnished.

During the course of arguments the P.I.O. submitted that all the available information is furnished.

6. 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 letter dated 09.08.2010 the Appellant has sought certain information consisting of 36 points/items from Sr. No. 1 to 36. The application was addressed to P.I.O., Dy. Registrar of Cooperative Societies, Department of Cooperative Office of the RCS. By Memorandum dated 31.08.2010 P.I.O./Dy. Registrar of Cooperative Societies informed the Assistant Register of Cooperative Societies, Central Zone that application dated 09.08.2010 from the Appellant was received on 18.08.2010 and Asst. Registrar was directed to furnish information sought therein directly to the applicant under intimation to their office. By reply dated 22.09.2010 the Asst. Registrar, Cooperative Societies Central Zone/P.I.O. furnished the information. Being not satisfied the Appellant preferred an appeal before First Appellate Authority/Respondent No. 2. By order dated 15.12.2010 the F.A.A. observed as under:-

“The Public Information Officer and Asst. Registrar of Co-op. Societies, Central Zone, Panaji is directed to give one more opportunity to the Appellant for inspecting the set of files “A” , “B” and “Audit Report” respectively and furnish information means any material in any form available in his office as defined under Right to Information Act, 2005, on payment of prescribed fees.”

It is pertinent to note here that according to the Appellant the appeal is not disposed off. However the order shows that the same is disposed off. The R.T.I. Act generally is a time bound programme. Appeal is to be decided within 30 days or 45 days but with reasons. F.A.A. to take note of the same in future.

7. The Appellant has submitted that some information is furnished. According to him regarding Sr. No. 1 list of documents not furnished and procedure not followed. However in respect of this point/Sr. No. 1 the report speaks and if aggrieved the same will have to be challenged in the appropriate Forum. Regarding procedure followed is mentioned.

Regarding point No. 2/Sr. No. 2 according to the Appellant declaration is given. His grievance is whether they are entitled to be members is not checked. Under R.T.I. available information is to be given.

Regarding point No. 3 and 4 the same are given.

Regarding point No. 5 the grievance is the documents are not verified. This aspect does not come in the realm of R.T.I. Under R.T.I. what is available or held by Public authority is to be furnished.

Regarding point No. 6, 7 and 8 the P.I.O. has rightly furnished the reply.

Regarding point/Sr. No. 9 also does not come within the ambit of R.T.I. Act. However according to the Appellant list is given.

Regarding point No. 10/Sr. No. 10 the same cannot be given under R.T.I. According to the Appellant decision is not justified. If this is

so then the same will have to be challenged before competent authority.

Regarding point No./Sr. No. 11 P.I.O. can seek any clarification if required and furnish the available information.

Point No. 12/Sr. No. 12 is given.

Regarding point No. 13/Sr. No. 13 the P.I.O. is not supposed to furnish the reasons. Hence rightly denied.

Regarding point No. 14/Sr. No. 14 the same can be provided if available with the Public Authority.

Regarding point No. 15/Sr. No. 15 the same is not available and rightly denied.

Regarding point No. 16 the reply is furnished.

Regarding point No. 17 if Public Grievances Officers is appointed or not be informed to the Appellant.

Regarding point No. 18/Sr. no. 18 and Sr. No. 19 the same are furnished.

Regarding point No./Sr. No. 20 clarification as required be sought and then available information be furnished.

Regarding point No./Sr. No. 21 the information is furnished. However regarding locus standii it is for the concerned court to decide.

Regarding 22 and 23 information furnished according to Appellant.

Regarding 24, 25, 26 and 27 the Appellant has no grievance.

Regarding point No./Sr. No. 28, 29, 30 and 31 the information is furnished according to the Appellant.

Regarding point No./Sr. No. 32 and 33 copies of notings only be furnished if not furnished earlier. Records do not show if furnished. Nor Appellant states so.

Regarding 35 and 36 Audited Reports are furnished. If report of 2009-10 is completed be furnished.

8. It is pertinent to note 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 a public authority and “information” and right to seek do not include opinions, explanations, etc. It does not mean that an information seeker can solicit opinion from P.I.O. of a public authority. It is further pertinent to note that Public Information Officer is not required to collect, compile or create information for the information seeker but he is expected to provide information available in the material form.

9. I have perused Section 4 of the R.T.I. Act. The implementation of Section 4(1) is the mandate of law and it is to be done by all the Public Authorities concerned. It need not be emphasized the importance of suo motu disclosures under Section 4(1)(b) as maximization of such disclosures would result in minimization of recourse to Section 6(1) of the Act thereby saving time, energy and resources of both information seekers and Public Authorities.

I have also perused Section 4(1)(d). Section 4 of the R.T.I. Act enumerates various obligations of the Public Authorities under R.T.I. Act – regime for proper maintenance and easy dissemination of information. Section 4(1)(d) is to be seen in this context and not as a commandment that public authorities are bound to given reasons, etc. of the orders of the quasi-judicial matters. The right of a citizen to get information from a public authority is conditioned by Section 2(f) subject to the exemptions as specified in the R.T.I. Act. It would be rather difficult for a P.I.O. of any public authority to give reasons for quasi-judicial decision taken by them. Even otherwise request for seeking reasons for a decision or for not consideration certain decisions or arguments in a particular case cannot be regarded as existing information as defined under Section 2(f) of the R.T.I. Act. Consequently there can be no obligation to provide the same which is non-est.

I am tempted to quote one ruling of C.I.C. and one of the Hon’ble Supreme Court which are as under:-

(i) In Major (Retd) P.G. Deval V/s. Central Excise & Custom Department (Decision No.F. No.CIC/AT/A/2008/00424 dated 28/7/2008) it was held that R.T.I. Act cannot be invoked to demand

and obtain from Public Authorities explanations, reasons, justifications and so on in respect of decision made. It was also observed as under:-

“The appellant is way off the mark when he says that the concept of transparency enjoins every public authority to keep providing explanations to parties in respect of decisions they have made. These orders especially quasi-judicial orders, are themselves appealable under other Act. All aspect of such decisions are closely scrutinized in the process of appeals and if these are found to be deficient the appellant is given the benefit. R.T.I. Act cannot be used as an instrument of supervision over the functioning of other public authorities and surely cannot be an instrument that converts the Central Information Commission into a Court of final appeal over all such public authorities. The procedures extent in the respective rules governing the functioning of public authorities need to be respected.”

(ii) In Khanapuram Gandaiah V/s. Administrative Officer & others (S.L.P No.34868/09 decided on 4/1/2010) in which the Hon’ble Supreme Court has dealt in detail on the question of the reasons as to how and for what reasons an order of a judge has been decided in a particular manner. It was observed :-

“6. Under the R.T.I. Act “information” is defined under section 2(f) which provides :

“Information” means any material in any form, including records, documents, E-mails, opinions, advices, press releases, circulars, orders, log-books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

This definition shows that an applicant under sec.6 of the R.T.I. Act can get any information which is already in existence and accessible to the public authority under law. Of course under the R.T.I. Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc but he cannot ask for any information as to why such opinions, advices, circulars, orders have been passed, especially in matters pertaining to judicial decisions. A judge speaks through his judgements or orders passed by him. If any party feels aggrieved by the order/judgement passed by a judge the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion.”

10. Regarding delay. The P.I.O./Respondent No. 1 received the Application on 18.08.2010 and he transferred the same by Memorandum dated 31.08.2010 and information is furnished by reply dated 22.09.2010. Considering this, information is in time. However there is delay in transferring. Normally it should have been sent/transferred as early as possible preferably within 5 days. In any case P.I.O. should note that such things should not repeat in future.

11. In view of the above, I am of the opinion that the appeal is to be partly allowed. Hence I pass the following order:-

ORDER

The Appeal is partly allowed. The Respondent/P.I.O. (concerned P.I.O.) is hereby directed to furnish the information to the Appellant as sought by him vide his application dated 09.08.2010 to the item No./Sr. No. 14, 17, 32, 33 and Audited report of 2009-10 if the same is completed **within 30 days from the date of receipt of this Order.**

Regarding item No. 11 and 20 information be furnished after seeking clarification from the Appellant. However clarification, if any, be sought within 8 days from the receipt of this order and the information be furnished

within 30 days from the receipt of this Order. Needless to add that in respect of point No./Sr. No. 32 and 33 copies of notings only be furnished as observed in para 7 hereinabove.

The Appeal is, accordingly, disposed off.

Pronounced in the Commission on this 20th day of July, 2012.

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

