

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 74/SIC/2011

Shri R. G. Furtado,
F3/A1, Virginkar Residency,
Ambaji,
Fatorda-Goa

.... Appellant

V/s.

1) Dr. Simon N. De Souza,
First Appellate Authority,
Chairman,
Goa State Pollution Control Board,
Dempo Towers, 1st Floor,
EDC Patto Plaza,
Panaji - Goa

... Respondent No.1.

2) Member Secretary,
Public Information Officer,
Goa State Pollution Control Board,
Dempo Towers, 1st Floor,
EDC Patto Plaza,
Panaji - Goa

... Respondent No.2.

Appellant in person.

Shri C. Fernandes, representative of Respondent No. 1.

Respondent No. 2 in person.

J U D G M E N T
(20.07.2012)

1. The Appellant, Shri R. G. Furtado, has filed the present appeal praying that the Respondent No. 1 be directed to provide the information as mentioned at Sr. No. 7 above; that Respondent No. 1 and 2 be directed to maintain all its records duly catalogued and indexed as required under Section 4(1) (a); that Respondent No. 1 and/or 2 to publish the particulars as required under the Section 4(1)(b) to facilitate the inspection of files; that penalty be imposed for refusing to provide the information; that disciplinary action under Section 20(2) against Respondent No. 2 for malafidely denying the request for information and knowingly giving misleading information and that Respondent No. 1 and/or 2 to provide suo motu under Section 4(2) of the R.T.I. Act the compliance report of all stipulated conditions of all the industries granted consent by GSPCB after obtaining it from the industries.

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

That the Appellant, vide application dated 31.12.2010, 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. 2. That the P.I.O./Respondent No. 2 furnished a reply vide his letter dated 30.01.2011. Being not satisfied with the reply the Appellant filed an appeal before the First Appellate Authority ('F.A.A.)/Respondent No. 1 on 10.02.2011. That the F.A.A. vide order dated 10.03.2011 directed the Appellant to inspect all the records concerning the said file on any working day within 10 days of the receipt of this order with a direction to furnish the requisite documents within 7 days thereafter. That the Respondent No. 1 failed to provide a reasoned order. That the Appellant approached the Respondent No. 2 for inspection of files and it was confirmed that the files were the same which was inspected by the Appellant in connection with other R.T.I. applications. That the information requested by the Appellant in the R.T.I. application dated 31.12.2010 are not available in the files.

Being aggrieved by the said order the Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondent No. 2/P.I.O. resists the Appeal and the detail reply of the Respondent No. 2 is on record. In short it is the case of the Respondent No. 2 that, vide application dated 31.12.2010 the Appellant requested for information from the Respondent No. 2 with respect to the Industrial Unit of M/s. Zuari Industries Ltd. That vide communication dated 31.01.2011, the Respondent No.2 had furnished the parawise reply to all the queries raised by the Appellant. That some of the requested information were held by another Public Authority hence as per Section 6(3) of the R.T.I. Act was transferred to that Public Authority i.e. Ministry of Environment And Forests, Government of India vide communication dated 10.01.2011 with copy endorsed to the Appellant. That the Respondent has made every effort to furnish all the requisite information to the Appellant by even requesting the Appellant to inspect the file as available with the Respondent Board to verify and ascertain the documents/records and to obtain the same. All assistance was given to the Appellant for seeking the information. That as per R.T.I. Act, 2005 the P.I.O is required to furnish all the information which is held and available on records of the Public Authority. That the Act

does not mandate that the information should be generated and furnished to the Appellant. That the Respondent Board functions under the provisions of the Water (Prevention and Control of Pollution) Act, 1981 and also under specified provisions of the Environment (protection) Act, 1986. As per the provisions of these Acts the Respondent Board grants consents to the industrial units/plants/activities. That all the information, documents required by the Respondent Board for grant of consent or authorizations are clearly specified in the Application forms which are to be duly filled and submitted to the Respondent Board for processing of their application. That all these information/documents from the industrial units for processing their applications are placed in the file records and made available to the information seekers. That the Respondent Board cannot direct the industrial units to furnish information or documents just because the same are required by the Appellant. The Respondent No. 2 fully admits that if certain information or documents are required by the Board in its processing of applications or for obtaining clarifications the Respondent can direct the third party to furnish such information by exercising the powers in terms of the provisions of the Act. That the Appellant's claim to direct the third party to furnish the information requested by him was not accepted since the said information was not required by the Respondent Board for processing of the applications nor for obtaining any clarifications. That the Appellant filed a First Appeal before the First Appellate Authority and he was also offered inspection. That the Respondents have not withheld or denied any information which is available on records. The Respondent No. 2 denies that P.I.O. has failed to discharge his duties. That P.I.O. cannot justify why certain action was not done or furnish reasoning for not initiating any action. It is further the case of the Respondent No. 2 that the Board has maintained the records of all the files available with the Board and the same are duly catalogued and indexed as required under R.T.I. Act. That the same were shown to the Appellant when he visited the Board office. The Respondent no.2 denies that he has ever malafidely denied or gave any misleading information sought by the Appellant. According to the Respondent No. 2 the appeal is devoid of merit and deserves to be dismissed.

The reply of Respondent No.1/F.A.A. is also on record.

4. Heard the arguments of the Appellant and the Respondent No. 2/P.I.O. as well as Respondent No. 1.

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, vide application dated 31.12.2010, the Appellant sought certain information consisting of 7 points/items that is, Sr. No. 1 to 7. That the same was in respect of compliance of Conditions of Zuari Industries Ltd. By reply dated 31.01.2011 the P.I.O. furnished the information. Being not satisfied with the reply the Appellant preferred the appeal before the First Appellate Authority/Respondent No. 1. By order dated 10.03.2011 the F.A.A./Respondent No. 1 observed as under:-

“During the hearing he stated that P.I.O. has not furnished the information to some of his queries and for some incomplete information is furnished.

Upon hearing the parties I am of the opinion that since the Appellant is not satisfied with the information furnished to him by the P.I.O. he is given the liberty to inspect all the records concerning the said file on any working days within 10 days of the receipt of this Order and the requisite documents available on record may be furnished to the Appellant within 7 days.”

6. It is seen that letter dated 10.01.2011 the P.I.O./Respondent No. 2 transferred the request in respect of item No./Sr. No. 3(b), (d), (e), (f) and 5(c) to P.I.O., Ministry of Environment & Forests, Government of India, New Delhi under Section 6(3) of R.T.I. Act.

7. In the Appeal the grievance of the Appellant was that the following information was not furnished:-

Point No. 1.

Point No. 2 – reply is vague and deceptive.

Point No. 3 – information provided is incomplete.

Point No. 4 – information provided is incomplete.

Point No. 5 – Not furnished.

Point No. 6 – Not furnished.

Inspection was given. In the Memo of Appeal the Appellant states “The information requested by the Appellant in the R.T.I. application dated 31.12.2010 are not available in the files.”

It is to be noted here that in terms of the provisions of R.T.I. Act a citizen is entitled to seek disclosure of information that is available in a material form with a public authority, that is, the information is available in any file or document and the like.

A combined reading of Section 2(f), 2(i) and 2(j) of the R.T.I. Act would indicate that a citizen is entitled for disclosure of information which is in material form with a public authority and “information” and the right to seek does not include opinions, explanations, etc.

8. Coming to point No. 1 the reply is that the Goa State Pollution Control Board does not maintain the database of conditionswise compliance of all the conditions stipulated in the consent to operate orders issued by the Board under the Water Act and the Air Act. Hence the conditions-wise compliance report cannot be furnished. It is also stated that the industrial unit of Zuari Industries Ltd. submits the monitoring reports of the stack, water cess F.I.P. reports, etc.

According to the Appellant certain conditions are to be fulfilled. According to the Appellant compliance of conditions by ZIL and enforcement of these conditions by GSPCB are missing. I have perused the reply of Respondent No.2/P.I.O. as well as of Respondent No. 1 and particularly para 5.

If the statute requires that such reports are to be submitted/maintained then G.S.P.C.B. has to see that the same are properly maintained. Therefore if the law requires to maintain such reports then G.S.P.C.B. is duty bound to maintain the same. And if the same is not maintained as per law then the Public Authority is at fault. For this the remedy for Appellant is to approach a competent forum.

However whatever available report could be furnished.

According to the Appellant under R.T.I. report could be sought. Since the report is not maintainable in such a fashion then the question of seeking from ZIL does not arise. However P.I.O./Public Authority to see that if law requires to maintain in that fashion then there should be strict compliance of the same.

Regarding point No. 2. The P.I.O. has furnished the reply. However P.I.O. has not furnished the information asked. To my mind P.I.O. should reply (i) Has GSPCB obtained the same or made any attempts to obtain the same and (ii) Has this violation been reported to the Regional Office etc, to enable them to take action?

Regarding point No. 3 (b) (d) (e) and (f) are transferred under Section 6(3) of R.T.I. However, no information is furnished to the Appellant. P.I.O. has furnished regarding 3(a), 3(c), (g) and (h). P.I.O. will have to furnish the information in respect of point No. 3(b) since it concerns name and address of the authority.

Regarding point No. 4. The P.I.O. will have to furnish 1st and 2nd part of the query. Regarding action information is furnished. The P.I.O. will have to furnish information to:-

- (i) Has the Regional office, Zonal office, of the CPCB or MOEF been informed; and
- (ii) Is there a procedure that such violations have to be intimated to the R.O. etc as they too carry out inspection and monitoring?

Regarding 5(a) (b) and (c) the information is not available. However 5(c) is transferred under Section 6(3) of the R.T.I. Act.

Regarding 6 the information is furnished, however, analysis report could be furnished.

Regarding 7 reply is furnished. However, if such communication is received by now the same could be furnished.

9. Regarding the aspect of delay. The information was asked by application dated 31.12.2010. The reply is dated 31.01.2011. Apparently it is in time.

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

ORDER

The Appeal is allowed. The Respondent No. 2/P.I.O. is hereby directed to furnish the information to items at Sr. No. 1 i.e. available report; item at Sr. No. 2 i.e. (i) Has GSPCB obtained the same or made any attempts

to obtain the same and(ii) Has this violation been reported to the Regional Officer etc to enable them to take action; item No./Sr. No. 3(b); item at Sr. No. 4 i.e. (i) Has the regional office, Zonal office, of the CPCB or MOEF been informed and (ii) Is there a procedure that such violations have to be intimated to the R.O. etc as they too carry out inspections and monitoring? And item at Sr. No. 6 and 7 as observed in para 8 hereinabove in respect of application of the Appellant dated 31.12.2010 within 30 days from the date of receipt of this Order.

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

