

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 87/SCIC/2009

Mrs. I. P. Rodrigues,
Major age, R/o Vihar Building,
H. No. 13/195, Opp. St. Inez Church,
St. Inez, Panaji - Goa.

..... Appellant.

V/s.

1. Public Information Officer,
Office of the Commissioner of Excise,
Old High Court Bldg., Panaji - Goa.
2. The Commissioner of Excise,
Panaji - Goa.

..... Respondents.

Appellant in person.

Adv. Rohit Bras De Sa on behalf of Respondent No. 2.

J U D G E M E N T **(14-01-2010)**

1. This Second Appeal is preferred by the Appellant, Smt. I. P. Rodrigues, praying that records and proceedings be called; that the appeal be allowed, impugned order be set aside and Respondent No. 1 be directed to forthwith furnish the information as sought by the Appellant vide her application 03/06/2009.

2. The brief facts leading to the present appeal are as under: - That by application dated 03/06/2009 addressed to Public Information Officer ('P.I.O.' for short) Office of Commissioner of Excise, Panaji, the Appellant sought some information under the Right to Information Act, 2005 ('RTI' Act for short). That by letter dated 29/06/2009 the Respondent No. 1 gave the information. This information was given in time. Being not satisfied with the said information the Appellant filed the First Appeal before Respondent No. 2. By Order dated 10/08/2009, the Respondent

...2/-

No. 2/the First Appellate Authority ('F.A.A.' for short) dismissed the said Appeal. It is the case of the Appellant that the said Order is unjust, illegal, arbitrary and contrary to the provisions of the RTI Act, 2005.

Being aggrieved by the said order the Appellant has preferred this Appeal on various grounds which are set out in the memo of Appeal.

3. The Respondents resist the appeal and their affidavit is on record. In short it is the case of the Respondent that the Appellant is not entitled to any information sought by application dated 03/06/2009 as the definition of 'information' cannot include the answers to the question such as 'why' which would be the same thing as asking the reason for a justification for a particular thing. That the information which is part of the record is to be furnished and the information that is furnished to the Appellant is as available on the record. It is also their case that whatever permission granted has been informed to the Appellant as is on record. That the specific information in the form and manner in which the Appellant desires to seek is not actually on record and that it would not be proper to answer in the form of 'yes' or 'no'.

4. Heard the Appellant and the Respondent in person. According to the Appellant she had sought for a specific information in connection with two doors which were bricked up pursuant to an Order dated 15/03/2008 passed by the Chief Secretary in appeal bearing No. 4/08 in which the Commissioner of Excise was a party. However, the said specific query has not been answered. According to the Appellant the information sought fell within the purview of section 2(f) of the RTI Act and the Respondents were duty bound to reply to the same. In short according to the Appellant information ought to have been furnished as asked for.

5. During the course of the arguments Shri Rohit Bras De Sa submitted that information available on record has been furnished. The information which is sought cannot be furnished in that fashion and answering such a question would amount to giving reason. P.I.O. is duty bound to give what is on record. The Respondents also relied on Dr. Celsa Pinto V/s. Goa State Information Commission and anr. 2008(4) ALL MR 586 and Appeal No. CIC/AT/A/2006/00588 Vibhor Dileep Baria V/s. Central Excise and Customs, Nashik. He also referred to the affidavit.

6. I have carefully gone through the records of the case, considered the arguments advanced by the parties and also considered the rulings on which the Respondent placed reliance. The point that arises for my consideration is whether there has been denial of information as contended by the Appellant.

At the outset I must say that the object of the RTI Act is to ensure greater and more effective access to information under the control of public authorities. Information is like an oxygen for a democratic society. Section 3 of the Act ensures that subject to the provisions of the Act all citizens have the right to information. The citizens and information seekers have, subject to few exceptions, an overriding right to be given information on matters in possession of the state and public agencies that are covered by the Act. RTI Act seeks to promote transparency and to hold Government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions of the Act.

7. It would not be out of place to mention about the definition of information. Under section 2(f) "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. In an old case (AIR 1957 Punj 226) the Punjab High Court explained information as synonymous with knowledge or awareness in contradistinction to apprehension, suspicion or misgiving.

Section 2(i) "record" includes-----

- (a) any document, manuscripts and file;
- (b) any microfilms, microfiche and facsimile, copy of document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device.

It is to be noted here that the term 'record' for the purpose has been defined widely to include any document, manuscript file etc. Under clause 2(j) "Right to Information" means the right to information accessible under this Act which is held by or under control of any public authority and powers under the Act include the right to: (a) inspect works, documents, records of any public authority; (b) take notes extracts or certified copies of documents or records; (c) take certified samples of material and (d) obtain information of print outs, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print outs where such information is stored in a computer or in any other device.

8. Coming to the case at hand the Appellant herein sought information as under: -

“Whether the Commissioner of Excise, Head Office, Panjim has issued permission or not to Mr. Rosario De Costa, Eden Rock Bar & Restaurant at H. No. 13/177/7 St. Inez, Panjim to break open the two doors which were bricked up by the order from the Chief Secretary, Govt. of Goa, Secretariat, Porvorim dated 15/03/2008 in Appeal No. 4/2008.”

Exhibit B on record is the reply. As per the same Shri Rosario De Costa vide his letter dated 23/10/2008 made to the Commissioner of Excise had requested that he wants to extend an area by additional 28 sq. mts. to the existing area of 42 sq. mts. of Eden Rock Bar & Restaurant situated at St. Inez, Panaji. Further the same mentions that the permission has been granted for using additional area totaling in all 67 sq. mts. as certified by the Corporation of the City of Panaji in House No. 13/177/7 at St. Inez, Panaji.

It appears that this information is supplied as available on record.

It is the case of the Appellant that this is not the information sought by her. According to the Appellant the same ought to have been answered as 'yes' or 'no' form.

It is to be noted here that section 2(j) provided only information held by or under the control of any public authority. It does not mean that an information seeker can solicit opinion from the P.I.O. of a Public Authority. The rule of law now crystalised by the various rulings of C.I.C. as well as SIC is that the information held is to be provided and Commission's jurisdiction can go no further than only directing that information in the form held be provided. In the case before me, it is

provided that permission has been granted for using additional area. According to the Respondent (and affidavit filed on record) there is no mention of breaching open of two doors.

Again it is held (as decided by CIC in K. Anand Kini V/s. Canara Bank on 10/05/2007) that no queries like why, what, how etc. can be answered by a public authority. In the guise of information seeking, explanations and queries about nature and quality of action of public authority need not be raised for answer. Again it is held that RTI Act does not cast on the public authority any obligation to answer queries in which attempt is made to elicit answers to questions with prefixes such why, what, when and whether.

9. It is seen from the record that there is an order in Appeal No. 4 of 2008 Before Chief Secretary where Commissioner of Excise is a party. As per the said order, it was ordered that licence should be restored on certain conditions and one condition is as under: -

- "1. -----
2. Brick up of the connecting door, if any, between the Eden Rock Bar and Eden Rock Club.
3. -----."

The query that is asked may be because of this. 'Right to Information' under RTI Act, 2005 has been defined by the Act to mean the right to information which is held by or under the control of any public authority. It, therefore, necessarily implies that the information to which an information seeker is entitled can only be that which is available in the records of the Public Authority concerned. I do agree with the contention

of the Respondent that information which is not held or maintained by the public authorities cannot be given.

10. The eloquent reply to the contention of the Appellant is found in (1) Shri Vibhor Dileep Baria V/s. Central Excise and Customs, Nashik (Appeal No. CIC/AT/A/2006/00588 dated 30/11/2006) and (2) Dr. Celsa Pinto V/s. The Goa State Information Commission & Anr. 2008 (4) ALL MR 586; relied by the Respondent.

In Shri Vibhor Dileep Baria V/s. Central Excise and Customs, Nashik (Supra) information sought was in the nature of some questions starting with 'whether'.

In para 11 it is observed 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 by or under the control of any public authority. If the public authority does not hold information or the information cannot be accessed by it under Section 2(f) or if the information is non-existent, 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."

Para 14

"14. Thus, information would mean any material in existence and apparently it cannot mean and include something that is not in existence or has to be created. An "opinion" or an "advice" if it is a part of the record is "information" but one cannot seek from a PIO either an "opinion"

or an "advice" as seeking such opinion or advice would be in effect seeking a decision which the CPIO may not be competent or authorized to take. Similarly, the existing report is information but preparing a report after an enquiry cannot be treated as available "information". Likewise, the data maintained in any electronic form is "information" and the whole of such data or a part thereof can be made available to an applicant by a public authority under the RTI Act. But making an analysis or data or deriving certain inferences or conclusions based upon the data so collected cannot be expected to be done by the CPIO under the RTI Act. On the same analogy, answering a question or proffering advice or making suggestions to an applicant is clearly beyond the purview of the Right to Information Act."

In Dr. Celsa Pinto V/s. The Goa State Information Commission & anr. (supra) is observed as under:-

"8. -----

The definition cannot include within its fold answers to the question "why" which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information."

In my view the information as available with the Public Authority is seen to have been furnished.

11. At this stage Appellant states that she may be permitted to withdraw the appeal. Request is granted. The Appeal is disposed off as withdrawn.

Pronounced at Panaji on this 14th day of January, 2010.

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

