

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 137/2009

Shri Franky Monteiro,
H. No. 501, Devote, Loutolim,
Salcete, Goa – 403 718.

..... Appellant.

V/s.

Public Information Officer,
The Under Secretary (Revenue – I),
Secretariat, Porvorim – Goa.

..... Respondent/Opponent.

Appellant present in person.

Respondent absent at the time of Judgment.

J U D G E M E N T **(26-03-2010)**

1. This is the Second Appeal preferred by the Appellant, Franky Monteiro, praying that appeal be allowed and the Respondent be directed to furnish forthwith the proper and correct information as sought by the Appellant; for action against the Respondents and for penalty.

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

That the Appellant made an application dated 25/8/2009 requesting to furnish certain information under Right to Information Act ('RTI' Act for short); that the Respondent failed to reply to the Application within the prescribed thirty days and hence the Appellant filed an Appeal before First Appellate Authority ('F.A.A.' for short). It is the case of the Appellant that he received a reply from Respondent dated 22/9/2009, i.e. after filing the First Appeal, informing the Appellant to collect the information sought but failed to furnish the information sought vide para 4 and that letter stated that Public Information Officer has transferred his

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application under section 6(3) of the RTI Act to the Collector, South Goa District, Margao requesting the Collector to provide the information in regards to para 4 of the Application. That the F.A.A. allowed the First Appeal and by Order dated 6/11/2009 directed the Respondent to furnish the information as regards to point 4 of the application within two weeks from the receipt of the Order. Since the Respondent failed to comply the Order, the Appellant has preferred this Second Appeal.

3. The Respondent resists the Appeal and their say is on record. It is the case of the Respondent that the Appellant is trying to challenge the decision of the Government by asking "whether" and that the Appellant has no right to ask 'why' 'whether' etc. as Appellant is questioning the Government's decision. The Respondent has given reasons as to why Application was transferred to Collector, South Goa. It is further the case of the Respondent that vide letter No. RD-RTI-57-2009 dated 30/11/2009 had communicated that the said information is not available in the office records. That the question of defying the Order of the First Appellate Authority does not arise. That the dealing hand attached to this office alongwith Asst. Public Information Officer was drafted for compulsory Training Programme by the General Administration Department for a period of one week and thereafter drafted for duty under the Protocol Department in connection with the President's visit from 24th November to 4th December, 2009 and hence there was a slight delay in forwarding the information as per the Orders of F.A.A. In short it is their case that whatever information that was available on record with the Department has been given to the Appellant and the Appellant also agreed in his Appeal Memo. According to Respondent the Appeal be dismissed.

3. Heard the arguments. The Appellant submitted that Q.4 has not been answered and the same ought to have been answered. According to him the Respondent is bound to answer the same. He also produced some ruling of this Commission.

Shri D. M. Redkar on the other hand submitted that whatever information was available on record has been furnished. The information sought is in questionnaire form and in fact is the opinion which cannot be given under R.T.I. Act.

4. I have carefully gone through the records of the case, and also considered the arguments advanced by the parties. The short point that arises is whether the information sought is to be provided or not.

At the outset I must say that this Appeal is filed for non-execution of the Order of the First Appellate Authority dated 6/11/2009. The First Appellate Authority is not a party before this Commission. Apparently the Appellant has no grievance against F.A.A. Under section 19(3) of the RTI Act, 2005 a Second Appeal lies only against the Order of the First Appellate Authority. As the Appellant has no grievance against the F.A.A. this Appeal technically cannot be considered as Second Appeal. However, in the ends of justice and in true spirit of RTI Act, I am proceeding with the same as the grievance of the Appellant is non-furnishing of information.

I must say that object of the RTI Act is to ensure greater and more effective access to information under the control of public authority. The citizens and information seekers have, subject to few exemptions, an overriding right to be given information on matters in possession of the State and public agencies that are covered by the Act.

5. 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, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be assessed by a public authority under any other law for the time being in force.

Under section 2(i) "record" 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 the control of any public authority and the powers under the Act includes 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.

6. The Appellant has sought information as under: -

"4. The 20 point programme being a central scheme, whether the local authorities have the powers to amend the eligibility criteria towards 20 point Programme, if yes kindly provide me the relevant provisions of law."

I have perused the reply as well as letter dated 30/11/2009 addressed to the Appellant. As per the said letter the said information is not available in the records.

Section 2(j) provided only information 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 on records of the Public Authority concerned. It does not mean that an information seeker can solicit opinion from Public Information Officer of a Public Authority.

It is held (as decided by CIC in K. Anand Kini V/s. Canara Bank on 10/5/2007) 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 to questions with prefixes such as why, what, when and whether.

In Dr. D. V. Rao V/s. Deptt. of Legal Affairs, Shastri Bhavan, New Delhi [File No. CIC/AT/A/2006/00045 dated 21/4/2006] where the information sought was "why the recruitment rules were not amended" the CIC 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 as why, what, when and whether.

In Shri Vibhor Dileep Baria V/s. Central Excise and Customs, Nashik [Appeal No. CIC/AT/A/2006/00588 dated 30/11/2006] 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.”

Again in para 14 it is observed. -

“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 P.I.O. 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

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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. 2008(4) ALL MR 586, it 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”.

I have also perused the Order passed by this Commission and produced by the Appellant. I have also perused some other rulings of C.I.C. in which it is held that opinion, explanation and clarification etc. cannot be furnished; that personal opinion on queries not to be given. It is also held that Public Information Officer not to interpret any law or rule for the information seeker.

7. All this discussion is now purely academic. In the case at hand, it is seen that the First Appellate Authority has passed the Order on 6/11/2009. The operative part of the Order is as under: -

"In view of the above the appeal preferred by the Appellant is allowed. The Respondent/P.I.O. Under Secretary (Revenue) is directed to furnish the information sought by the Appellant as regards to point No. 4 of his application dated 25/8/2009 as per provisions of the RTI Act, 2005 within two weeks from the receipt of the Order."

This Order has not been challenged by the Respondent meaning thereby submitting to the Order. In fact Appellant is not aggrieved by the said Order. The Appellant has chosen to file the appeal as information has not been furnished within 2 weeks as ordered by F.A.A.

In my view this Commission cannot intervene in the matter as the Appeal is mainly for the purpose of obtaining information as directed by F.A.A.

8. Of course there is delay. In para 2(i) of the reply there is an explanation given for delay. I do accept the explanation and do not wish to proceed for penalty proceedings and hope that in future time schedule would be maintained.

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

ORDER

The Respondent to furnish the information to Point No. 5 as ordered by F.A.A. by his Order dated 6/11/2009 within 15 days from the receipt of this Order. No further intervention is required. The Appeal is accordingly disposed off.

Pronounced in the Commission on this 26th day of March, 2010.

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

