

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 89/2009

Mr. Caitano R. Furtado,
H. No. 1246(1), Manjilwaddo,
Benaullim, Salcete – Goa.

..... Complainant.

V/s.

Public Information Officer,
Town & Country Planning Department,
South Goa, Margao – Goa.

..... Opponent/Respondent.

Adv. V. Braganza for Complainant.

Opponent in person.

ORDER **(23-04-2010)**

1. The Complainant, Caitano R. Furtado, has filed this Complaint praying that the Opponent be directed to furnish the information within a period of one week and that the Opponent be penalised as per the law for the default and was neglected in performance of the statutory duties.

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

That the Complainant vide application dated 10/9/2009 and 30/9/2009 sought certain information from the Opponent under the Right to Information Act, 2005 ('RTI' Act for short). That the information related about action taken with respect to the plan submitted by one Shri Joaquim Furtado pertaining to the regularization of a carpentry workshop situated in the property bearing survey No. 273/1 at Manjillvaddo, Benaullim. That the other information was in respect of furnishing certain copies, all applications and wall plans submitted by said Joaquim Furtado. That the Opponent sent a reply dated 18/9/2009 whereby Opponent

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refused to provide the information. That the reply dated 18/9/2009 was also a refusal to grant information requested and that the Opponent has committed breach of his legal obligation. That in the reply to the other application though the copies of the application of Mr. Joaquim Furtado alongwith plans are enclosed. However, only copy was furnished and that was of the deed of sale dated 25/10/1995. In short, it is the case of the Complainant that the information requested was not furnished to the Complainant in time as such Complainant was put to unnecessary hardships and losses. Hence, the present Complaint.

3. The Opponent resists the Complaint and detailed say is on record. The Opponent refers to the application received and also replies furnished. In short, according to him the information sought by letter dated 10/9/2009 cannot be issued under Right to Information Act as he was supposed to furnish the information pertaining to the material available with him. It is also the case of the Opponent that Public Information Officer was required to create record or material in the form of 'action taken report' by gathering information from the dealing hands and other officials and by making inquiries from the dealing hand and by perusing all the correspondence available in the concerned file, which scope of work is not within the regime of the Right to Information Act. That in order to furnish information, Public Information Officer was required to reshape the information by collecting available data/material pertaining to the construction concerned. The Opponent has also relied on certain circulars from the Director of Information and Publicity in respect of information etc. Regarding application dated 30/9/2009, the Public Information Officer was not sure whether such application was at all made. According to Public Information Officer, the Complainant himself

was not sure about such application. In short, it is the case of the Opponent that he has acted within the provisions of the RTI Act and has disposed off applications of the Complainant under the provisions of the RTI Act. According to him, the Complaint is liable to be dismissed.

4. Heard the arguments. The Learned Adv. Shri V. Braganza argued on behalf of the Complainant and the Opponent argued in person.

Advocate for the applicant narrated in detail the facts about the case i.e. information sought etc. According to him, refusal ought to have been under section 8 but in the instant case refusal is malafide and contrary to law. He pointed out in detail about both the applications. He also submitted about the attitude of the Public Information Officer and the same is to be considered.

5. During the course of the arguments, the Opponent narrated about the facts of the case. He has argued on similar lines as mentioned in his reply. According to him, he has acted in terms of RTI Act and that the Complaint ought to be dismissed.

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

7. It is seen that the Complainant made an application dated 10/9/2009 seeking certain information. By reply dated 18/9/2009, the Public Information Officer informed that the information cannot be furnished and gave reasons that the Act requires to furnish what is available and secondly that Public Information Officer will have to generate information.

Another request was moved on 30/9/2009 seeking certain copies etc. and also information about action taken. By reply dated 4/11/2009 copies of application alongwith plans were furnished. Regarding information similar reply was given.

Incidentally both replies are within time.

8. I have perused the reply filed by the Public Information Officer to the Complaint and also perused the reply given to the Applications under RTI Act.

9. At the outset I must say that right to know is a basic right of citizens of a free country. Without adequate information a person cannot form an informed opinion. The Right to Information Act has been enacted to provide for a legal right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. 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 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 materials 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.

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.

Section 4 speaks of obligations of public authorities and every Public Authority shall maintain all its records duly cataloged and indexed in a manner and the form which facilitates the right to information under this Act.

10. By application dated 10/9/2009 the applicant/Complainant sought certified copy of the action taken, in regularization of plan of the above said carpentry workshop. By reply dated 18/9/2009 the Opponent informs that information sought cannot be furnished as:

1. The act requires the furnishing of the "material" as is available and does not require the Public Information Officer to create the information pertaining to "Action taken" and then furnish it to the applicant.
2. The Public Information Officer will have to generate the information after perusing the records and then furnish the same to the applicant.

Now the information was in connection with the action taken or not. In my view such an information can be given.

In a case [Arun Kanti Dasgupta V/s. South Eastern Coalfields Ltd. (SECL) Bilaspur Case No. CIC/AT/A/2006/00593 dated 20/2/2007] where the information in respect of the action taken on the petitions submitted by the Employees Union Solicited, the Central Information Commission observed that the Respondents were not right in concluding that the queries of the Appellant did not qualify to be information. A citizen has a right to know from a public authority whether it had acted on those interpretations or has chosen to ignore them. Thus Respondents were directed to give the Appellant within four weeks of the receipt of order point wise replies regarding action taken in respect of

In V.K. Juneja V/s. Ministry of Defence (Application No. CIC/AT/A/2006/00557 dated 29/1/2007] a query about the action taken on the Appellant's letter addressed to the Defence Minister and Defence Secretary sought – rather than giving a clear reply, the matter was treated as a request for removal of alleged encroachment and the CPIO transmitted the application to Cantonment Executive Officer Meerut Cantonment – the Commission held that the C.P.I.O. had quite adroitly circumvented an answer to the straight forward question.

In view of this, the information sought can very well be given.

11. Regarding Application dated 30/9/2009. Reply is dated 4/11/2009. Here also Opponent mentions about Action Taken Report. In view of what is stated above in my view this can be given.

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12. It was contended by Advocate for the Complainant that the refusal is malafide and contrary to law. He also referred to the attitude of the Opponent.

I have perused the replies furnished. The same at the most can be termed as due to lack of proper appreciation of the concerned provisions of the Act. Incidentally the replies have been furnished in time. Public Information Officer should bear in mind that procedure stipulated under various provisions of the Right to Information Act should be strictly adhered to. Opponent should in future communicate clearly reasons for withholding of the information under the Act. One cannot loose sight of the fact that being a people friendly Act some difficulties are bound to arise due to lack of proper appreciation of the provisions of the Act. In any case benefit is to be given to the Opponent that there was no malafide intention but only lack of proper appreciation of the provisions of the Act.

It must be noted here that Public Information Officer is the fulcrum around which the RTI Act operates and a variety of functions have been assigned to him. He has to deal with requests, process them, gather the information requested and make information available to the information seeker. Public Information Officer should not get irritated by application and must bear in mind that he is performing a statutory duty. Language should be proper and clear as the language is the vehicle of thought. Hope in future the Public Information Officer shall bear in mind the purpose of RTI Act and particularly the time schedule.

13. There are two sets of information in this Complaint. I have not touched this aspect herein.

14. In any case in my view the Complainant ought to get the information as the purpose of RTI Act is per se to furnish information.

15. In view of all the above, the Opponent is hereby directed to furnish information sought by the Complainant by applications dated 10/9/2009 and 30/9/2009 within 15 days from the date of receipt of this Order.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 23rd day of April, 2010.

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

