

# GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 33/SCIC/2010

Dr. Victor De Souza,  
Anne Villa, Povoacao,  
Moirá, Bardez – Goa.

..... Appellant.

V/s.

1. Public Information Officer,  
Dr. Pradip Dhavjekar,  
Health Officer, Primary Health Centre,  
Aldona, Bardez – Goa.
2. First Appellate Authority,  
Dr. Mrs. Rajananda Dessai,  
Director,  
Directorate of Health Services,  
Panaji - Goa.

..... Respondents.

Appellant in person.

Respondent No. 1 in person.

Smt. Signapurker on behalf of Respondent No. 2.

## **J U D G E M E N T** **(28-04-2010)**

1. The Appellant, Dr. Victor D'Souza, has preferred this Second Appeal praying for a direction to Public Information Officer to furnish the correct information asked by the Appellant; to set aside the Order of First Appellate Authority; to pass strictures and for penalty and compensation.
2. The brief facts leading to the present Appeal are as under: -

That by an application dated 22/4/2009 the Appellant sought certain information under Right to Information Act ('RTI' Act for short) from the Public Information Officer (P.I.O.), Primary Health Centre, Aldona. That the P.I.O. vide letter No. PHCA/RTI/09/10/26, dated 18/5/2009 has furnished misleading and wrong information on all points. Being not satisfied, the Appellant preferred First Appeal, however, the First Appellate Authority ('F.A.A.' for short) dismissed the Appeal.

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Being aggrieved by the Order of F.A.A. the Appellant has preferred this Appeal on the grounds as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and their say is on record. It is the case of the Respondent No. 1 that whatever information was available in the office records has been furnished. That Goa Public Health Act, 1985 does not provide tailor made answers to the queries of the Appellant and he has the option of going through the Act himself. That the norms followed for the N.O.Cs at PHC, Aldona are at par with those followed at the Primary Health Centers all over the State. Anyone P.H.C. cannot be changing the norms. It is the case of the Respondent No. 1 that Local Authority i.e. the Village Panchayat forwards letter of construction NOCs to the Health Officer for clearance on sanitary point of view. That no direct N.O.Cs. are issued from Health Officer's office but provisional N.O.Cs. are issued addressed to the Local Authority who in turn issues the final N.O.C. to the party. It is further the case of Respondent No. 1 that the Appellant has asked information intermingled in such a way that part of it is under RTI Act and other part is not. In short according to Respondent No. 1 whatever information available has been furnished to the Appellant.

4. It is the case of Respondent No. 2 that whatever information was sought by the Appellant has been furnished to him and P.I.O. has also mentioned the Sections and Rules under which he has issued N.O.C. That the criteria followed by the P.I.O to satisfy himself for issuing necessary N.O.Cs. do not fall under the purview of RTI Act. In short according to Respondent No. 2 whatever information is furnished by the P.I.O. is correct.

5. Heard the arguments. The Appellant argued in person and also submitted written arguments which are on record. According to the Appellant the information sought has not been furnished and what is given is incorrect and misleading.

6. During the course of his arguments, the Respondent No. 1 submitted that whatever information was available has been furnished. He also relied on the copy of the Order dated 10/3/2010 in Complaint No. 23/SCIC/2009.

7. 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 Appellant by letter dated 22/4/2009 sought some information consisting of 3 points. By letter dated 18/5/2009 the Respondent No. 1 furnished the reply. Since the Appellant was not satisfied, he preferred the First Appeal, however, the said Appeal was dismissed. It is the contention of the Appellant that P.I.O. has furnished misleading and wrong information on all three points and that F.A.A. ruled that information asked does not fall under the purview of RTI Act, 2005 which is a wrong contention.

8. 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.

Sec 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.

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

1. Kindly quote the Sections and Rules including Amendments and guidelines and provide an extract of the same under which the Health Officer, Primary Health Center, Aldona has issued letter No. PHCA/NOC/Occupancy/08-09/3007 dated 23.1.09 to the Sarpanch, Village Panchayat, Moira granting NO OBJECTION from the sanitary point of view for the Residential Building Block 'B' in Sy. 72/15 in Povoacao, Moira when the Residential Complex comprising 29 flats is still incomplete.
2. Kindly quote the Sections and Rules including Amendments and guidelines and provide an extract of the same under which the Health Officer has issued letter No. PHCA/NOC/Occupancy/08-09/3007 dated 23.1.09 to the Sarpanch, Village Panchayat Moira when the revised plan showing the dimensions for the two septic tanks and soak pits and also the soak pits for the bath and kitchen waste water was not approved by the authorities.
3. Kindly quote the Sections and Rules including Amendments and guidelines and provide an extract of the same under which the Health Officer, Primary Health Center, Aldona has issued letter No. PHCA/NOC/Occupancy/08-09/3007 dated 23.1.09 to the Sarpanch, Village Panchayat Moira when the revised site plan showing two septic tanks and soak pits and also the soak pits for the bath and kitchen waste water was not approved by the authorities.

As per the reply: -

1. The Goa Public Health Act, 1985 and Rules, 1986; Notification, 61/2/79-PHD section 9(1) reads as – A tenement shall be considered habitable if minimum one living room, kitchen, bathroom, sanitary type of latrine and safe drinking water is

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provided with sufficient number of windows and is maintained in hygienic condition to the satisfaction of the sanitary authority.

The Goa Public Health Act, 1985 and Rules, 1986, Section 29(1) – (extract)

No person shall construct any building, house, cess pool and any other structure unless prior permission to that effect is obtained from the Health Officer or the Medical Officer charge of the respective Health Centre, at the time of starting such construction and also at the time of actually occupying such constructed premises.

2. Such rules as contemplated by you do not exist by which it is mandatory to insist on revised plan of the septic tank/soak pit dimensions when the sanitary authority is satisfied of the hygienic conditions.
3. Such rules as contemplated by you do not exist by which it is mandatory to insist on revised site plan of the septic tank/soak pit when its location is not changed and when the sanitary authority is satisfied of the hygienic conditions. So also no rules are there by which it is mandatory to get approved soak pits for the bath and kitchen waste water as long as the sanitary authority is satisfied with its hygienic conditions.

It appears that this information is supplied as available on record. According to the Appellant, it is not the information. It is to be noted here that section 2(j) provide 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 in the records of the public authority concerned. It is not open to an information seeker who ask in the guise of seeking information

questions to the public authorities about the nature and quality of their actions. The public authority is not bound to answer "under what circumstances" to an information seeker.

Views regarding correctness or otherwise of any circular or notification of the Government in the light of the decision of the Supreme Court cannot be sought under the RTI Act (CIC decision dated 11/5/2007 Satish Mehra V/s. Supreme Court).

In the case before me answers to question No. 1 has been furnished by quoting notification as well as relevant provision of the Act. However, the Appellant contends that answer is not properly furnished i.e to say the way he wants as can be seem from his written arguments. In any case if the public authority does not hold information or the information cannot be accessed under section 2(f) or information is non-est, the public authority cannot provide the same under the Act. To be noted further Act does not make it obligatory on the part of the public authority to create information for the purpose of its dissemination.

10. Even otherwise I do not think that this authority can in any way help the Appellant much as it is seen the Appellant had filed Complaint bearing No. 23/SCIC/2009 praying to direct the P.I.O to furnish the information asked by the Complainant (Appellant herein). By Order dated 10/3/2010, the Hon'ble State Information Commissioner observed "since the Opponent issued the letter No. PHCA/NOC/Occupancy/08-09/3007 dated 23/1/2009 based on the provisions of the Goa Public Act, 1985 and the Health Authorities are not concerned with the revised plan, the information provided by the Opponent in the communication dated

18/5/2009 meets the requirements to the information sought at Sr. No. 1, 2 and 3 in the request dated 22/4/2009. There are no reasons to proceed any further and the Complaint is disposed off".

11. In view of this, the issue of misleading or wrong information is set at rest by the Order dated 10/3/2010 as mentioned above.

12. The attempt of the Appellant in seeking the information that he wants may be genuine but I am unable to provide him any relief through the RTI in view of the above Order and due to the nature of demanding explanation of the decision which the RTI Act does not enjoin a public authority to supply.

Viewed in this context and specially in view of the Order passed as mentioned above, I do not find any infirmity in the Order of the First Appellate Authority and therefore, this Appeal must fail and hence the order: -

### **ORDER**

The Appeal is dismissed.

Pronounced in the Commission on this 28<sup>th</sup> day of April, 2010.

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





