

GOA STATE INFORMATION COMMISSION
'Kamat Towers' Seventh Floor, Patto, Panaji – Goa

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Appeal No.301/SCIC/2016

Shri Rajkumar Raju Gadge,
Office No.301, 302 &306,
3rd floor, Commerce Centre Building,
Opp. Old Mapusa Municipality,
Mapusa Goa. 403 507 Appellant

V/s

1) The Public Information Office,
Mapusa Municipal Council,
Mapusa –Goa.
2) The First Appellate Authority,
Mapusa Municipal Council,
Mapusa –Goa. Respondent

Filed on :28/12/2016
Disposed on:08/11/2017

1) FACTS:

a) The appellant herein by his application, dated 15/9/2016, filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO in the form of attested photocopies of full file containing PDA approval plan and order being file no.1123 dated 19/4/88 and licence no.114.

b) The said application was replied on 1/12/2016 informing the appellant that the information is not traceable. According to appellant the information as sought was not furnished he filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).However inspite of filing said appeal no order is passed by FAA and hence this second appeal under section 19(3) of the act.

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c) Notices were issued to the parties, pursuant to which they appeared. The PIO on 17/8/2017 filed a reply to the appeal through advocate. On subsequent date i.e. on 19/9/2017 the representative of PIO, Shri Vinay Agarwadekar appeared and submitted that the information as is sought is not available. He was therefore directed to file the affidavit in support of the said fact and matter was posted for filing such affidavit.

d) In spite of giving opportunity to the PIO to file affidavit as directed till date no affidavit is filed on record in support of the contention that the records as sought are not available. The matter therefore was posted for orders.

2) FINDINGS

a) Under the Act furnishing of information is a rule unless exempted u/s 8 or 9 of the act. In the present case it was the contention of the PIO vide his reply dated 01/12/2016 that the information sought was not traceable being old. This stand was also put forth by the PIO in his reply to the present appeal. As the burden to prove that the information is not available or traceable is on the PIO, PIO was directed to prove said fact by way of an affidavit. In spite of several opportunities the PIO, failed to file any document to show that the file is not traceable or it is destroyed under any orders. An opportunity was given to the PIO to discharge his burden that he acted reasonably and diligently while refusing the information, through an affidavit. No affidavit is filed on record in spite of opportunities. The PIO has not even bothered to attend the hearing.

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- b) In the aforesaid circumstances I do not find any grounds to substantiate that the information is not available or that the files are not traceable and hence the appellant shall be entitled to the information as sought. The PIO herein has also shown lack of concern to the process of this Commission and not discharged his burden that he has acted diligently and reasonably. In the circumstances I find it appropriate to direct the PIO to furnish the information as also to issue notice to the PIO as to why action under section 20(1) and/or 20(2) should not be initiated.
- c) In view of the above finding the present appeal is disposed with the following:

O R D E R

The appeal is allowed the PIO shall furnish to the appellant the information as sought by him by his application dated 15/09/2016, free of cost, within 15days from the date of receipt of this order by him.

Issue notice to PIO, Mapusa Municipal Council to show cause as to why action under section 20(1) and /or 20(2) should not be initiated against him/her for failure to furnish the information.

The reply should be filed by PIO on 7/12/2017 at 10.30 am with supporting documents if any. Failure to file reply may result in further orders as may be found appropriate.

Appeal disposed off accordingly.

Notify the parties .

Pronounced in the open proceedings.

Sd/-

(Mr. Prashant S. P. Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa