

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

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

Appeal No.70/SCIC/2016

Shri Jawaharlal T. Shetye,
H. No.35/A, Ward No.11,
Near Sateri Temple,
Khorlim, Mapusa –Goa.

..... Appellant

V/s

- 1) The Public Information Office,
Smt. Nazeera Sayed,
Mapusa Municipal Council,
Mapusa –Goa.
- 2) The First Appellate Authority,
Mr. Clen Madeira,
Mapusa Municipal Council,
Mapusa –Goa.

..... Respondent

Filed on :02/06/2017

Disposed on:08/11/2017

1) FACTS:

a) The appellant herein by his application, dated 06/02/2017, 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 certified copy of application form alongwith noting sheets and relevant document relied for processing application of Prabhakar Yende, for obtaining Trade Licence.

b) The said application was replied on 21/02/2017 informing the appellant that the information is not available. 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). It is according to appellant that during first appeal the PIO informed appellant that information is not available since

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records are old. However the FAA by order, dated 03/05/2017, directed the PIO to trace the records and furnish information to appellant. According to appellant PIO failed to comply with said order and furnish information and hence this second appeal under section 19(3) of the act.

c) Notices were issued to the parties, pursuant to which they appeared. 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 reply alongwith affidavit in support of the said fact to substantiate his reply 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 alleged fact 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 03/05/2017 pursuant to order of FAA that the information sought was not readily available being old. A submission was also made before me by the representative. 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

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failed to file any document to show that the file is not traceable or that it is destroyed under any orders. An opportunity was given to the PIO to discharge his burden under proviso to section 20(1) that she acted reasonably and diligently while refusing the information through an affidavit. No affidavit is filed on record inspite of opportunities. The PIO has not even bothered to attend the hearing.

- a) In the aforesaid circumstances I do not find any grounds substantiating that the information is not available or that the files are not traceable. In the absence of any proof that the information is in fact not available, it is to be held that the same exist and is dispensable. The PIO herein has also shown lack of concern to the process of this Commission and not discharged her burden that she has acted diligently and reasonably. In the circumstances I find it appropriate to hold that information is available and further 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.
- b) In view of the above finding the present appeal is disposed with the following:

ORDER

The appeal is allowed the PIO shall furnish to the appellant the information as sought by him by his application

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dated 06/02/2017, free of cost, within 15 days from the date of receipt of this order by her.

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 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