

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.90/2009

Shri Anthony D. Nogueira,
H. NO. 65, Jacnim,
Nr. Emerald Lawns,
Parra, Bardez – Goa.

.... Appellant

V/s

1) Public Information Officer,
State Registrar,
Shrama Shakti Bhavan,
Patto, Panaji – Goa.

.... Respondent No.1

2) First Appellate Authority
Law Secretary,
Secretariat, Porvorim – Goa.

.... Respondent No.2

Appellant alongwith Adv. S. Adelkar.
Respondent No 1 alongwith Adv. K. L. Bhagat.
Respondent No. 2 absent.

J U D G E M E N T
(07/06/2010)

1. This is an appeal preferred by the Appellant, Anthony Domnic Nogueira, praying that (i) the information officer of the State Registrar be directed to hold an inquiry in the matter of the power of Attorney alleged to be missing from the file, (ii) to inquire and state the names of officers/clerks responsible for registering the documents on the basis of the said power of attorney and after fixing responsibilities the necessary FIR be ordered to be filed in the concerned police station, (iii) for directing the information officer to secure the copy of the power of attorney from the office of Notary public Shri S H. Sardesai whose books come under the direct supervision of the information officer.

2. The brief facts leading to this present appeal are as under:-

That by an application dated 05/02/2009 the Appellant had made a request to the Public Information Officer ('P.I.O.' for short) of the State Registrar, Government of Goa, Panaji –Goa, to provide with the copies of certain documents. That the said Application was filed under Right to Information Act ('RTI' Act for short). That vide his letter dated 12/03/2009 and on payment of Rs. 40/- vide Receipt

...2/-

No. 22/7 dated 17/03/2009 has provided only one document i.e. Deed of Rectification. That other document that is power of Attorney has not been provided. That the PIO informed the appellant vide letter dated 27/04/2009 that the power of Attorney is not traceable. That the said information is misleading. Being not satisfied with the information furnished to him the Appellant filed the First Appeal before the First Appellate Authority ('FAA' for short). Being aggrieved by the order passed by the FAA. The Appellant has preferred this Appeal on the grounds as mentioned therein.

3. The Respondents resist the appeal and their say is on record. It is the case of the Respondent No. 1 that certified copy of the Deed of rectification was furnished. However, power of Attorney was not traceable. That the Appellant was made to make the payment of the fees only in respect of the said Deed of rectification furnished to the Appellant. In short it is the case of Respondent No. 1 that Power-of-attorney could not be given, as the same was not traceable. That the Appellant preferred the First Appeal before FAA/Respondent No. 2 and that by order dated 20/07/2009 appeal was partly allowed and standing order was issued to the Public Information Officer to furnish the copy of the said power-of-attorney to the Appellant as and when traced. It is further the case of the Respondent NO. 1 that strenuous efforts were made to trace the P/A, However, the same could not be traced and accordingly could not be furnished. That the Appellant is not entitled for the reliefs prayed.

4. Counter reply/rejoinder on behalf of Appellant as well as affidavit in reply of Appellant are on record.

5. Heard the arguments. The learned Adv. S. Adelkar argued on behalf of Appellant and the learned Adv. K. L. Bhagat argued on behalf of Respondent No. 1. Both the advocates also filed written arguments which are on record.

6. I have carefully gone through the records of the case and also considered the arguments advanced by the learned Advocate for the parties. The point that

arises for my consideration is whether the relief prayed is to be granted or not?

It is seen that the Appellant by letter dated 05/02/2009 sought certain information i.e. copy of deed of Rectification dated 15/10/1990 and power of Attorney dated 12/05/1990 by virtue of which the attorney has executed this Deed of Rectification on behalf of vendors. The Application was addressed to the Public Information Officer State Registrar, Panaji – Goa. the said Deed of Rectification was registered in the office of the Civil-cum-Sub-Registrar of Bardez in Mapusa Goa. By letter dated 11/02/2009 the said letter/RTI request was sent to District Registrar (North) Panaji – Goa. It is seen from the record that there is a letter dated 19/02/2009 from Sub-Registrar Bardez to District Registrar North, Panaji – Goa. stating that Deed of Rectification i.e. certified copy is furnished and further stated that the power of attorney which has been asked as information is not traceable in this office. By letter dated 12/03/2009 the Appellant is told to collect the information.

It Appears that Appellant made another letter dated 19/03/2009. By letter dated 02/04/2009, sub-Registrar Bardez informed State Registrar/Public Information Officer that power-of-attorney is not traceable in the office.

From the above it transpires that P/A is not traceable in their office.

The Appellant thereafter preferred First Appeal. By order dated 20/07/2009 the Appeal was partly allowed and standing order was issued to the PIO to furnish the copy of the power of attorney dated 12/05/1990 as and when traced to the Appellant. The order of First Appellate Authority mentions that it is unfortunate that at the relevant time P.O. As were not annexed to the concerned instruments, since instruments were drawn based on such P.O.A.

7. Very many contentions were advanced by the Advocate for the Appellant and even written arguments were filed. I have gone through the same. I also agree with the contention of the Adv. for the Appellant that if the contention of the Respondent is accepted that information cannot be furnished as the same is not traceable then it would be impossible to implement the RTI Act. However, it is

also a fact that information that is not available cannot be supplied. No doubt records are to be well maintained but papers missing from Government records is not an uncommon happening. In any case as the information sought is not traceable no obligation on the part of PIO to disclose the same, as the same cannot be supplied.

I have perused some of the rulings on the point:-

- (i) In a case (Shri B. S. Rajput V/s Council of Scientific & Industrial Research (CSIR)F. No.CIC/AT/A/2000-64 dated 15/09/2008) where respondent pointed out that all information barring one information (corresponding to Appellant's RTI request dated 13/06/2007) had been provided, the Commission held that it has no reason to disbelieve the categorical assertion of respondent and the document in question missing is more than 20 years old. This document being untraceable cannot be physically disclosed and resultantly there is no disclosure obligation on the Respondent.
- (ii) In Shri B. Bandropadhyay V/s Commissioner of Central Excise, Kolkata (Application No. CIC/AT/A/2006/00578, dated 14/02/2007) the Commission observed that such a plea should be exposed to rigorous scrutiny__ presently, there is nothing before the Commission that would enable it to critique or impeach the averments of the respondents __ there is no option but to close this case.
- (iii) In Shri Umakant K. Bokande V/s Indian Bureau of Mines (F.No. CIC/AT/A/2006/00046 dated 27/06/2006): it was observed that information that is not available cannot be supplied.

The rule of law now crystalised by the various rulings of central. Information Commission as well as State Information Commissions is that information/document that is not available cannot be supplied. The RTI Act can be involved only for access to permissible information. ...5/-

8. From the order of PIO as well as First Appellate Authority it is seen that the power of attorney is missing. NO doubt it is strange as well as surprising that power-of –attorney is missing from the public office. It is also seen from the records.

It is further seen that by letter dated 19th January, 2010, civil Registrar-cum-sub-registrar Bardez Mapusa addressed to Police Inspector, Mapusa Police Station, Mapusa, Bardez, requested to take necessary action I have also perused the remark made on the said letter.

9. The Respondent No. 1 has set the criminal law in motion. It is for the I.O/P.I. to record the statement/s of the concerned and lodge FIR and also to fix responsibility for misplacement of the said document and initiate action against the delinquent officer officials and may be suitable penalised as per law.

Normally this Commission would have left the matter to the concerned Department only. But since the concerned department has already lodged the Complaint it is for the investigation Agency to investigate and bring to the books the concerned persons and punish them suitably. The investigation officer should record the complaint in detail and carry further investigation.

10. Appellants have attacked the order of First Appellate Authority. However, I do not find any infirmity in the same. In fact such orders have been passed by Central Information Commission.

11. Coming to the prayers in the Appeal. Prayer (a) and (c) need not be granted. Since Complaint is lodged with the Police I do not think it is proper. Besides it is seen that the document was searched and the same was not found. As observed above, since complaint is lodged with the Police the same should be investigated properly so that the person responsible for the missing of the document can be booked.

12. In view of all the above, I pass the following order:-

ORDER

Appeal is partly allowed and the Police Inspector, Mapusa Police Station, Mapusa Bardez Goa to act on the letter dated 19/01/2010 of Shri Ramdas L. Pednekar, Civil Registrar-cum-Sub-Registrar Bardez-Mapusa and to record the statement/statements of the concerned and register the FIR and also to fix responsibility for misplacement of the said document/power-of-attorney and initiate action against the delinquent officer/officials and may be suitably penalised as per law.

Police Inspector/I.O to carry out the investigation and complete the same as early as possible.

The Appeal is accordingly disposed off.

Pronounced in the Commission at Panaji on this 7th day of June, 2010.

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

