

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No. 59/SCIC/2010/

Mr. Jose Joe Carneiro,
H. No. 1118, Sirvodem,
Salcette –Goa.

....

Appellant

V/s

1) The Public Information officer,
Margao Municipal Council,
Margao –Goa.

....

Respondent No.1

2) The First Appellate Authority,
The Director,
Directorate of Municipal Admn.,
Panaji –Goa.

....

Respondent No.2

Appellant present.

Respondent No. 1 absent. His representative D. Dessai present.

J U D G E M E N T
(22/10/2010)

1. Appellant, Jose Joe Carneiro, has filed the present appeal praying for a direction to Respondent No. 1 to furnish the construction file No.A/33/93-94 in the name of star construction, Margao Goa, for inspection of the appellant as stated in the application dated 09/10/2009 and in the order of the First Appellate Authority dated 06/01/2010 and for action under section 20 of Right to Information Act.

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

The Appellant has sought inspection of construction license file order No. A/33/93-94 in the name of star construction under Right to information Act 2005 but the Respondent No. 1 did not furnish the same to the Appellant. That the Appellant preferred First Appeal before the First Appellate Authority and that the appeal was allowed. However, the Respondent No. 1 informed that the file was not traceable and that information would be provided as soon as file is traced. Being aggrieved the appellant has preferred the present appeal.

...2/-

3. The Respondents resist the appeal and their reply is on record. It is the case of Respondent No. 1 that the information sought pertains to the file of the year 93-94 i.e. nearly 16 years old. That on account of the extensive renovation work and painting of the building of the Margao Municipal Council under taken by it and re-shuffling of its departments from one Department got mixed up with the other. That the Respondent No. 1 has not been able to trace such files including the construction licence file No.A/33/93-94 about which information is sought by the Appellant. That the efforts are made by his office to locate and trace the said file. It is the case of the Respondent No.1 that as soon as file is traced it will be in a position to furnish the information sought by the Appellant.

It is the case of the Respondent No.2 that he heard the appeal and decided the same.

4. Heard both sides and perused the records. It is seen that the Appellant filed an application dated 09/10/2009 seeking certain information under Right to Information Act ('RTI' Act for short) from Respondent No.1 It appears that no reply was given by Respondent No.1 within 30 days from the receipt of the request. The Appellant preferred an appeal before First Appellate Authority. The said appeal was disposed off by order dated 06/01/2010. The order reads as under:-

"Heard the Appellant. The Respondent did not appear for the hearing. The Appellant has sought for inspection of a file vide letter dated 09/10/2009. The Respondent has not responded within the statutory period of one month.

Therefore the Respondent shall make available office record sought by the Appellant within a period of 10 days from the date of order i.e. -1/01/2010."

It is seen that by letter dated 13/01/2010 the Respondent No. 1 informed the Appellant that the requested file is not traceable in the office record. It was also

informed that the efforts to trace the file on priority basis is in progress and information will be provided to him as soon as the records are traced by their office. It is seen that till now file is not traced.

From the above it transpires that the said file is not yet traced. The Respondent No. 1 has given explanation both in reply and reply/written arguments. According to the Appellant the file is deliberately not given.

4. Respondent No. 1 has to take positive steps to trace the file. If the contention of the Respondent No.1 that information cannot be furnished as the same is not traceable is accepted then it would be impossible to implement Right to Information Act. However, it is a fact that information that is not available cannot be supplied. No doubt records are to be well maintained.

In my view Respondent No. 1 should take steps to trace the said file and also to fix responsibility for misplacement of the said document and initiate action against the delinquent officer/officials and may be suitably penalized as per law. M.M.C. is expected to be the trustee of records and if the same are missing it will create havoc. This is to be avoided and corrective action is to be taken.

6. According to the Appellant there is delay. According to him no reply was given within the stipulated period of 30 days. Apparently there is some delay. However to my mind Public Information Officer/Respondent No.1 should be given an opportunity to explain about the same.

7. In view of the above the Respondent No. 1 to trace the said file. Since there is delay the Respondent No. 1 is to be heard on the same. Hence the Order:-

...4/-

O R D E R

The Appeal is allowed. The Respondent No. 1 to trace the said document/file.

Issue notice under section 20(1) of the Right to Information Act to Respondent No. 1/Public Information Officer to show cause why penalty action should not be taken against him for causing delay in furnishing information. The explanation if any, should reach the Commission on or before 26/11/2010 public Information officer/Respondent No.1 shall appear for hearing.

Further inquiry posted on 26/11/2010 at 10.30 a.m.

Pronounced in the Commission on this 22nd day of October, 2010.

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

