

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No. 131/SCIC/2010

Damas Oswald Dias,
H.No. 61217, Xenimol Gotton
Cuncolim, Salcete –Goa.

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Appellant.

V/s

1) Public Information Officer,
Cuncolim Municipal Council,
Cuncolim, Salcete –Goa.

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Respondent

Appellant absent. Adv. J. S. Fernandes for Appellant.

Respondent absent. Adv. S. Caeiro for Respondent.

J U D G E M E N T

(23/11/2010)

1. The Appellant, Damas Oswald Dias, has preferred this Appeal praying that the Respondent be directed to furnish the information sought for in terms of clause (5) of the Appellant's letter dated 16/02/2010 and to immediately comply with the directions in the order dated 23/04/2010; for penalty and for disciplinary action.

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

That the Appellant, vide application dated 16/02/2010, sought certain information under Right to Information Act ('RTI'Act for short) from the PIO/Respondent. That office of the Respondent issued a reply dated 09/03/2010 alongwith certified copies of a complaint dated 21/12/2009, Notice dated 11/02/2010 and writing purporting to be an inspection report dated 11/02/2010. That the Respondent failed to furnish the information in terms of clause (c) of the Appellant's letter dated 16/02/2010 nor has provided any reason for the same. Being not satisfied the Appellant preferred an appeal before the First Appellate Authority. That by order dated 23/04/2010 the First Appellate authority directed the Respondent to furnish information to issue "C" dated 16/02/2010 without charging fees within a period of 10 days from the date of

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order. It is the case of the Appellant that till date the respondent has failed to provide the information and hence the present appeal on various grounds as set out in the memo of Appeal.

3. The Respondent resists the appeal and the reply is on record. It is the case of the Respondent that he has furnished all the information to the Appellant, however, the information under issue (c) is concerned the fact is that the Appellant requested for grant of trade license for running Bar and Restaurant in the premises/ shop No. 603/A at Murida Cuncolim. That since objections were filed by the mother/brother of the Appellant, the Respondent directed the Appellant to submit N.O.C. from other co-owners or legal heirs of late Leonido Dias, the deceased father of the Appellant. That since the Appellant failed to submit the NOC the Respondent was constrained to issue the Notice dated 11/02/2010. It is the case of the Respondent that in the said notice the word "rejected" was inadvertently used instead of "filed". It is further the case of the Respondent that the Respondent by letter dated 30/04/2010 has already issued corrigendum, a copy of which is on record alongwith a copy of the A/D card. According to the Respondent the proceedings ought to be closed.

4. Heard the arguments. The learned Adv. Shri J. S. Fernandes argued on behalf of Appellant and the learned Adv. Shri S. Caeiro argued on behalf of the Respondent.

Adv. for the Appellant referred to the facts of the case in detail. According to him information is received. However there is delay in furnishing the information.

Adv. for the Respondent also referred to the facts of the case and submitted that the delay, if any, is not with malafide intention. According to him there is no delay as such. According to him the issue in question is on account of family matter.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the Advocates of the party. The point that arises for my consideration is whether the information is furnished and whether there is any delay in furnishing the information.

It is seen that the appellant by his letter sought certain information from the Respondent. The said letter was received in the office of respondent on 16/02/2010. The information consisted of three points and the same was in the nature of certified copies of documents. By reply dated 09/03/2010 the Respondent furnished certain documents that is point No. (a) and (b). However document at (c) i.e. order was not furnished. Being not satisfied the Appellant preferred the appeal before the First Appellate Authority. By order dated 23/04/2010 it was observed as under:-

"Therefore, the Respondent shall make the information available on issue at 'c' dated 16/02/2010 without charging fees within a period of 10 days from the date of order i.e. 23/04/2010."

It transpires that no order was passed as such and a corrigendum was issued and the same was sent to the Appellant.

During the course of his Arguments the Adv. for Appellant States that the information has been received.

Since information is received no intervention of this Commission is required on this count.

6. Looking at the factual back drop of this case this Appeal is in fact for non-execution of the order of First Appellate Authority dated 23/04/2010. Apparently the Appellant has no grievance against F.A.A. Under section 19(3) of the R.T.I Act 2005 second Appeal lies only against the order of F.A.A. Of course, Appellant has filed an

application dated 19/08/2010 for amendment, However, in the ends of Justice and in the true spirit of the R.T.I. Act, I am proceeding with the same as the grievance of the Appellant is non-furnishing of Information.

7. Now it is to be seen whether there is any delay. According to the Advocate for the Appellant there is delay where as according to the Adv. for the Respondent, there is no delay as such and assuming there is delay the same is not with malafide intention.

Looking at the sequence of events apparently there is delay. However, to my mind, Public Information Officer should be given an opportunity to explain that the same was not intentional, malafide etc in the factual matrix of this case.

8. In view of the above prayer (a) need not be granted since information is furnished. Regarding prayer (b) Respondent is to be heard on the same. Prayer (c) does not arise in the facts and circumstances of the case. Hence I pass the following order:-

ORDER

Appeal is partly allowed. Since information is furnished no intervention of this Commission is required.

Issue notice under section 20(1) of the Right to Information Act to the Respondent/PIO 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 21/12/2010. Public Information Officer/Respondent No. 1 shall appear for hearing.

Further inquiry posted on 21/12/2010 at 10.30 am.

Pronounced in the Commission on this 23rd November, 2010.

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

