

Respondent No. 1 submitted that file was not traceable. It is the case of the Appellant that he suspects that Respondent No. 1 has tampered or destroyed the case file. That the said case was filed by Appellant's mother and the same is regarding the pathway near their family property. That the said case was disposed in their favour in 2003 but he had not collected the copy of the order. It is the case of the Appellant that the Respondent No. 1 has purposefully and willfully denied the information.

3. Respondent No. 1 resists the appeal and his say is on record. It is the case of Respondent No. 1 that vide letter dated 23/11/2009 the appellant was called upon to appear before the office of Respondent No. 1 to give clarification regarding the documents he had asked for. That there is no question of tampering with the documents or destroying the documents as the said documents were not handed over to the dealing hand, when the charge of was given to the dealing hand. That no information has been purposefully denied by respondent No. 1. The case as set out in the memo of Appeal has been specifically denied by the Respondent No.1. It is further the case of the Respondent No. 1 that the information sought by the Appellant was checked in the office of the Respondent No. 1 and it was found that such information was not available in his office. That every effort has been made to trace the required information so as to give it to the Appellant. However, the information sought could not be traced in the office nor the file number is mentioned in the charge list of the dealing hand while handing over the charge. It is further the case of the Appellant that even if the court gives direction to submit the documents providing the information as called by the Appellant; the Respondent No. 1 is not in possession and will be unable to supply the information. According to respondent No.1, the question of disciplinary action and question of compensation does not arise.

4. Heard both sides and perused the records.

It is seen that by application dated 15/10/2009 the Appellant sought certain information i.e. certified copies of the order in case No.MAM/PER/C1(ii)/1LL-CONT/

530/2003. It appears that no reply is given i.e. no information furnished within the stipulated time. It appears that on 18/11/2009 the Appellant filed the First Appeal. As per the order of First appellate Authority it is seen that information is not traceable hence P.I.O. was not directed give the information. It was further observed as under:- "Further the P.I.O. is hereby directed to see that if he gives the reply to the parties in time even if the information is not available in his office".

It appears that the said file/information is not traceable in the office of Respondent No.1.

5. The file is of recent origin, however, the same is not traceable. It appears from the reply of Respondent No. 1 that while handing the charge the same was not given. If the contention is accepted that information cannot be furnished as the same is not traceable then it would be impossible to implement the R.T.I Act. However it is also a fact that that information that is not available cannot be supplied. No doubt records are to be well maintained. In any case as the information sought is not traceable, no obligation on the part of P.I.O to disclose the same, as the same cannot be furnished.

I have perused some of the rulings of Central Information Commission on the point. The rule of Law now crytalised by these rulings is that information/document that is not available cannot be supplied. The Right to Information Act can be invoked only for access to permissible information.

In my view the higher authorities should hold proper inquiry and bring to book the delinquent officer/official.

6. Appellant contends that there is delay in the sense that he was not informed within the stipulated period. The First Appellate Authority also mentions about delay in the order. In any case the Public Information Officer should be given an opportunity to explain the same.

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7. Coming to the prayers in the Appeal. Prayer (a) cannot be granted in view of all the above. Regarding prayer (b) the Respondent No. 1 is to be heard on the same. Prayer (c) in my view cannot be granted in the factual backdrop of this case.

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

O R D E R

Appeal is partly allowed. The Collector North Goa to conduct an inquiry regarding the said file and to fix responsibility for misplacement of the said file/information and initiate action against the delinquent officer/officials including lodging of F.I.R and/or be suitably penalized as per law. The inquiry to be completed as early as possible preferably within 3 months.

Issue Notice under Section 20(1) of the Right to Information Act to Respondent No. 1/P.I.O 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 09/12/2010. Public Information Officer/Respondent No.1 shall appear for hearing.

Further inquiry posted on 09/12/2010 at 10.30 am.

Pronounced in the Commission on this 8th day of November, 2010.

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

