

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint N. 466/SCIC/2010

Shri Vishnu J. Phadte,
H.No.717/1 and 717/2,
Post vagator, Shapora
Badem,Bardez –Goa

...

Complainant

V/s

The Public Information Officer,
Panchayat Secretary,
Assagao Panchayat,
Assagao, Bardez –Goa.

...

Opponent

Complainant in person.

Opponent in person.

O R D E R
(16/12/2010)

1. This is a complaint filed by the Complainant, Shri Vishnu J. Phadte, praying that opponent be fined for not furnishing the information and also for compensation.

2. It is the case of the Complainant that he had forwarded his application before Panchayat Assagao dated 23/10/2002 for the transfer of house taxes of house No. 717(1) and (2) on his mother's name. That on failure to transfer the house tax and to give reply to his request he forwarded an application under Right to Information Act ('RTI' Act for short). That the opponent did not reply to his request so he filed complaint before Block Development Officer. That on 17/11/2009 he received a letter from Panchayat Secretary but the date of reply was written as 20/08/2009 which is false. That the requested information was not furnished. That the BDO directed the Secretary/Opponent to furnish the information within 10 days. That no information was furnished. Being aggrieved the Complainant has filed the present Complainant.

2. The Opponent resists the complaint and his reply is on record. It is the case of the Opponent that allegations made by the Complainant are false and fabricated. That the Opponent received a letter under RTI Act on 14/07/2009 from the Complainant and the Complainant paid the application fees only on 29/07/2009 vide receipt No.

...2/-

335/72 after being informed vide letter No. VP/ASS/2009-2010/668 dated 16/07/2009. That thereafter the opponent furnished the information to the Opponent vide letter dated 20/08/2009 which was within time as per RTI Act. That the information was ready and the Complainant was informed to collect the same. That the information was furnished. It is the case of the opponent that he could not attend the court of First Appellate Authority, however, he had informed the court by letter dated 30/09/2009. It is further the case of the opponent that complaint is liable to be dismissed.

4. Heard the arguments. The Complainant argued in person and opponent also argued in person. According to the Complainant information is not furnished in time and even after First Appeal the same is not furnished. According to the opponent the information is furnished in time.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not.

It is seen that by application dated 15/07/2009 the Complainant sought certain information. The application was addressed to the Sarpanch. The Information sought was in respect of an application filed on 23/10/2002 by Mirabai Jaidev Phadte. It appears that the application was without prescribed fees and by letter dated 16/07/2009 the Complainant was told to pay the same which the complainant paid on 29/07/2009. It is seen that the Opponent/PIO, by reply dated 20/08/2009, furnished the information that is to say that information is not available. In short the information that is sought is not available with the Opponent. The information/complaint/file is not traceable in the office of the opponent.

It is seen that First Appeal was filed and by order dated 27/10/2009 the FAA directed the opponent to furnish the information within 10 days. It is seen that during

first two hearing the Complainant and opponent were absent. It is seen that opponent by letter dated 30/09/2009 informed the court that he would not remain present as he had to attend training programme. Copy of letter and Memorandum are on record.

6. According to the Complainant reply was not in time. As per the letter dated 20/08/2009 the reply is in time considering the fact that application fees were paid on 29/07/2009. It is the contention of the complainant that he received the reply on 17/11/2009. However, there is nothing on record to show the same. As per record reply appears to be in time.

7. The Complaint is of the year 2002, the same is about house tax. However the said letter is not available. If the contention 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 . 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 furnished.

I have perused some of the rulings of the central Information Commission on the point. The rule of law now crystallized by these rulings is that information that is not available cannot be furnished. Right to Information Act can be invoked only for access to permissible information. It is to be noted that Panchayat, Municipal Corporations are custodians of documents and if such important documents are not traceable or are missing it will create problems. Hence in my view the higher authorities should hold proper inquiry and bring to book the delinquent officer/official.

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

O R D E R

Complaint is partly allowed. The collector North Goa to conduct an inquiry regarding misplacement/missing of the said Complaint/application/file and to fix responsibility for misplacement of the said file/information and initiate action against

the delinquent officer/officials including lodging of FIR and/or suitably penalised as per law. The inquiry to be completed as early as possible preferably within 3 months and report compliance.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 16th day of December, 2010.

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

