

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No. 159/SCIC/2010

Shri Vithal K. Naik,
Laboratory Attendant,
People's Higher Secondary School,
Rua-de-Ourem,
Panaji - Goa

...

Appellant

V/s

1. Public Information Officer,
Principal,
People's Higher Secondary School,
Rua-de-Ourem, Mala,
Panaji – Goa

...

Respondent No.1.

2. First Appellate Authority,
Director of Education,
18th June Road,
Panaji – Goa

...

Respondent No.2.

Adv. J. Naik for the Appellant.

Respondent No. 1 alongwith Adv. N. Kamat.

Respondent No. 2 absent. His representative D. Chandiker present.

J U D G M E N T
(14.01.2011)

1. The Appellant, Shri Vithal K. Naik, has filed this Appeal praying that Respondent No. 1 be directed to furnish the correct and full information; that penalty be imposed on the Public Information Officer and disciplinary action as contemplated under the Act be recommended against the Public Information Officer.

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

That the Appellant, vide his application dated 27.01.2010 sought certain information under the Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer ('P.I.O.)/Respondent No. 1. That by reply dated 17.02.2010 the respondent No. 1 refused to furnish the information by giving lame excuses under the guise that information

asked for is not traceable. Being not satisfied the Appellant preferred appeal before the First Appellate Authority ('F.A.A.)/Respondent No. 2. That the Respondent No. 2 allowed the Appeal with direction to the P.I.O. to provide the documents to the Appellant free of cost by making a thorough search by 19.05.2010. That despite the clear directions from the Respondent No. 2, the Respondent No. 1 failed to supply the information to the Appellant. Being aggrieved the Appellant has preferred the present appeal on various grounds as set out in the Memo of Appeal.

3. The Respondent No. 1. resists the Appeal and the reply is on record. It is the case of the Respondent No. 1 that the Appeal is not maintainable in law or on facts. That no appeal be allowed to be converted into complaint, without any application in that regard, without hearing the Respondent No. 1. On merits it is the case of the Respondent No. 1 that there has not been any refusal to supply information requested by the Appellant. That the Appeal/Complaint is false, frivolous and baseless and the same is liable to be dismissed. That the Appellant has already collected certified copies of documents which could be traced by the Respondents as on 17.02.2010 namely (1) 3 reports/complaints received and (2) reminder dated 08.09.2009 from Dy. Director, Education (PLG). That by letter dated 17.02.2010 the Respondent No. 1 had also indicated to the Appellant that document namely the letter dated 13.04.1988 as sought by the Appellant, could not be traced, on account of being old document. That though the documents were furnished the Appellant preferred the First Appeal on the purported ground of refusal of request. That the present Appeal has been filed only to harass the Respondent No. 1 and to somehow or other pressurize the Respondent No. 1 and the Trust into submission in view of disciplinary proceedings against him and the appeal which is pending. That diligent efforts were made to take the search however the document could not be traced. That Respondent No. 1 managed to trace two more reports, however, the other is not traceable. That the Respondent No. 1 took over as P.I.O. since the year 2009 with his becoming the Principal of the School. That

the Respondent No. 1 was not able to trace two documents and as such copies could not be furnished. That there is no defiance of the order but the Respondent No. 1 is handicapped as document is not traceable. That when two more reports were traced and the same sought to be furnished, the Appellant refused to accept the same. According to the Respondent No. 1 Appeal is liable to be dismissed.

Additional reply dated 01.12.2010 and application dated 16.12.2010 are on record.

4. Heard the arguments. The learned Adv. Shri J. Naik argued on behalf of the Appellant and the learned Adv. Shri N. G. Kamat argued on behalf of the Respondent No. 1.

Advocate for the Appellant narrated the facts of the case in detail and referred to the page 2 of the Appeal Memo. According to him if such defence is allowed then the purpose of the Act would be defeated. He also referred to the reply and also attacked the same as not properly signed. In short, according to him incomplete information is furnished.

Advocate for Respondent No. 1 also referred to the facts of the case in detail. According to him letter dated 08.09.2009 has been furnished and that no reply has been sent to this letter. He next submitted that letter dated 13.04.1988 is not traceable. He submitted that only one report is not traceable. He next submitted that whatever information was available has been furnished in time. According to him section 20 is not applicable.

5. In reply Advocate for Appellant referred to the Order of First Appellate Authority and submitted that Appellant has not received letter dated 19.05.2010.

6. I have carefully gone through the records of the case and also considered the arguments advanced by the learned Advocates of 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 vide application dated 27.01.2010 sought certain information under R.T.I. Act. It is seen that three separate applications were filed. One application was regarding 9 reports/complaints from Chemistry Department against Mr. Vithal K. Naik of the year 1998. The other is regarding letter dated 13.04.1988 and the third is regarding letter dated 08.09.2009. It appears that the P.I.O. vide letter dated 17.02.2010 furnished 3 reports/complaints and a copy of reminder dated 08.09.2009 from Dy. Director of Education (Plg). That being not satisfied with the reply the Appellant preferred the Appeal. By order dated 03.05.2010 the First Appellate Authority allowed the Appeal and directed the P.I.O. to provide the documents to the Appellant free of cost by making a thorough search by 19.05.2010 and to report compliance.

It appears that one report and letter dated 13.04.1988 is not yet traced as can be seen from the tenor of the arguments and records of this case.

7. I do agree with the contention of the Advocate 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 R.T.I. Act. However, under R.T.I. it is also a fact that information that is not available cannot be supplied. No doubt records are to be well maintained. R.T.I. Act is to be invoked only for access to permissible information. However, all this is academic as F.A.A. has ordered to trace the said documents and the said order stands. The Respondent No. 1 will have to comply with the same.

8. Advocate for the Respondent No. 1 submits that the appeal is not maintainable.

Looking at the factual backdrop of this case this Appeal is for non-execution of the Order of the First Appellate Authority dated 03.05.2010. Apparently the Appellant has no grievance against F.A.A. under section 19(3) of the R.T.I. Act. Second Appeal lies only against the Order of the F.A.A. However, in the ends of justice and in the R.T.I. spirit, I am proceeding with the same as the grievance of the Appellant is non-furnishing of information.

9. It is seen that request for information is 27.01.2010. reply furnished is 17.02.2010. This is apparently in time. Order of F.A.A. is dated 03.05.2010 and there is letter of 18/19.05.2010. According to the Advocate for the Appellant this was not given and according to the Advocate for Respondent No. 1. Appellant refused the same. In any case right now the Respondent No. 1 should be given an opportunity to search the said documents and furnish to the Appellant.

10. In view of all the above I pass the following Order:

ORDER

The Appeal is allowed and the Respondent No. 1 is hereby directed to provide the said documents, within fifteen days from the receipt of this Order, after taking a thorough search of the same and report compliance on 25.02.2011.

Posted for compliance on 25.02.2011 at 10:30 am.

Pronounced in the Commission on this 14th day of January, 2011.

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