

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No. 209/SCIC/2010

Dilip Babuso Adel,
R/o. H. No. 126, Bansai,
Kakoda – Goa

...

Appellant

V/s

1. Public Information Officer,
Chief Officer,
Curchorem Cacora Municipal Council,
Curchorem – Goa

...

Respondent No.1.

2. First Appellate Authority,
Director of Municipal Administration/
Urban Development,
Panaji – Goa

...

Respondent No.2.

Appellant alongwith Adv. R. Diniz present.

Adv. N. Savoiker for Respondent No. 1 present.

Respondent No. 2 absent.

J U D G M E N T
(27.01.2011)

1. The Appellant, Shri Dilip Babuso Adel, has filed the present Appeal praying that the Records and Proceedings of the Courts below be called for and the Impugned Order be quashed and set aside; that Respondent No. 1 be directed to furnish the information sought by the Appellant vide his application dated 16.04.2010 and that penalty be imposed on Respondent No. 1.

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

That the Appellant, by his application dated 16.04.2010, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer ('P.I.O.)/Respondent No. 1. That the Respondent No. 1 refused to furnish the said information by his letter dated 26.05.2010 stating that the said information is not available in the office records. Being not satisfied with the said reply the Appellant filed an appeal before the First Appellate Authority ('F.A.A./Respondent

No. 2) against the deemed refusal and that the said appeal was allowed by Respondent No. 2 by Order dated 06.07.2010 directing the Respondent No. 1 to furnish the information including inspection of the file within fifteen days. It is the case of the Appellant that he made an application dated 28.07.2010 to furnish relevant information as early as possible. However, the Respondent No. 1 failed to furnish the same. Being aggrieved the Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and the reply of Respondent No. 1 is on record. It is the case of the Respondent No. 1 that on receipt of the letter dated 16.04.2010 from the Appellant, Respondent No. 1 tried to locate the information, however it was realized that the said information was not available in the office records of Respondent No. 1. Hence by reply dated 26.05.2010 the Appellant was informed that the said information is not available in the office records of the Respondent No. 1. That vide Order dated 06.07.2010 the Respondent No. 2 directed the Respondent No. 1 to search the office records and to allow the Appellant to inspect the file. That all efforts were made to trace the records and also to find if alternate record is available. However, no record in respect of the information sought by the Appellant is available in the office of Respondent No. 1. It is further the case of Respondent No. 1 that by notice dated 26.11.2010 the Appellant was requested to visit the office and inspect the file. That the Appellant visited the office on 06.12.2010 however the said file could not be made available as the same was not traceable. That non supply of information is neither intentional nor the same is in disregard to the Order passed by the Appellate Authority and/or the provisions of R.T.I. Act. That sincere efforts were made to locate the information and supply the same to the Appellant. That no information was suppressed nor withheld by the Respondent No. 1.

4. Heard the arguments and perused the records. It is seen that the Appellant vide his application dated 16.04.2010 sought certain information from the Respondent No. 1. The information was in connection with permission for repair of the house of one Sudhakar Dinnanath Fotto Dessai. By reply dated 26.05.2010 the Respondent No. 1 informed the Appellant that the information sought by him is not available in the office records. This reply is in time. It appears that the Appellant being not satisfied preferred the Appeal before the First Appellate Authority/Respondent No. 2. This Appeal was filed on 11.06.2010. By Order dated 06.07.2010 the First appellate Authority observed "The Respondent agreed to search the office records. The Respondent has to make all visible efforts to trace the records, trace alternate records and make available the information to the Appellant.

The Respondent shall make all efforts to make available the office records and allow the Appellant to inspect the file within a period of fifteen days."

It appears that the Appellant was requested to visit the office and inspect the files. However, the said file could not be made available.

The only grievance of the Appellant is that the file is deliberately not given. Whereas according to the Respondent No. 1 the file is not traceable.

5. How and in what way file is missing is not explained and/or stated. If this contention of the Respondent No. 1 is accepted that information cannot be furnished as the file is not traceable then it would be impossible to implement the R.T.I. Act. However, it is also a fact that information that is not available cannot be furnished.

I have perused some of the rulings of Central Information Commission on this point. The rule of law now crystallized by the various ruling is that information/documents that is not available cannot be furnished. The R.T.I. Act can be invoked only for access to permissible

information. It is to be noted here that it is obligatory on the part of Public Authority to maintain the records properly and duly indexed so as to facilitate the information under R.T.I. Act. In my view and as observed by F.A.A. also diligent efforts should be made to trace the file so also higher authorities should hold proper enquiry and bring to book the delinquent officer/official. The Deputy Collector, Quepem is requested to conduct the inquiry.

6. Advocate for Appellant also contends about penalty. Incidentally in this case reply has been furnished in time and apparently there is no delay as such.

7. In view of all the above since the file is not traced proper enquiry is to be held. Hence, I pass the following Order:

ORDER

The Appeal is allowed. The Deputy Collector, Quepem-Goa to conduct an enquiry regarding the said file and to fix responsibility for missing of the said file/information and initiate action against the delinquent officer/official including lodging of FIR and/or be suitably penalized as per law.

The enquiry to be completed as early as possible preferably within two months. A copy of the Order be sent to the Deputy Collector, Quepem-Goa.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 27th day of January, 2011.

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