

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No. 210/SCIC/2010

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

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Appellant

V/s

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

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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.
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 to set aside the Impugned Order and that Respondent No. 1 be directed to furnish the information to the Appellant sought under item No. 3 of the original application dated 18.09.2009 forthwith; and that penalty be imposed on Respondent No. 1.

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

That the Appellant is occupant of part of the house bearing No. 126 situated at Bansai, Kakoda belonging to his brother Vithoba Babusso Adel. That the Appellant by his application dated 18.09.2009, sought certain information under Right to Information Act, 2005 ('R.T.I. Act') from the Public Information Officer ('P.I.O.)/Respondent No. 1. That the Respondent No. 1 furnished information regarding item No. 1(a) and 1(b) and refused to furnish information as regards item No. 3, stating that file

is not traceable. That the Appellant filed appeal before First Appellate Authority/Respondent No. 2 which was allowed and Respondent No. 1 was directed to reconstitute the file and furnish the information required under item No. 3 within ten days from the date of the Order. It is the case of the Appellant that subsequent to the Order dated 01.01.2010 the Appellant made several representations to the Respondent No. 1 to furnish the required information and the Respondent No. 1 by his letter dated 29.01.2010 called upon the Appellant to visit his office on any working day to inspect the file but the information was not furnished stating that Respondent No. 1 is unable to furnish the copy of the required application by letter dated 14.05.2010. That the Appellant again filed appeal against the Respondent No. 1 before the Respondent No. 2 which was disposed by Order dated 06.07.2010 directing Respondent No. 1 to reconstitute the said file which they have not been able to do so and further direction to fix responsibility on the official responsible for keeping the office records and also to take disciplinary action as per rules within three months. However, no direction was given to furnish the information sought by the Appellant. Being aggrieved Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondent resists the Appeal and the reply of Respondent No. 1 is on record. It is the case of Respondent No. 1 that on receipt of the letter dated 18.09.2009 from the Appellant the Respondent No. 1 tried to locate the information. However, it was realized that the said information was not available in the office records and hence vide reply dated 09.10.2009 the Appellant was informed that the said information is not available in the office records of the Respondent No. 1. That vide Order dated 14.05.2010 the Respondent No. 1 informed the Appellant its inability to furnish the information and the steps taken to trace the records. Vide Order dated 06.07.2010 Respondent No. 2 directed Respondent No. 1 to search the office records and to allow the Appellant to inspect the file. It is the case of Respondent No. 1 that all efforts were

made to trace the records and also to find if the alternate record is available. However, no record in respect of the information sought by the Appellant is available in the office of the Respondent No. 1. That Respondent No. 1 also sought copy of the application from Shri Gokul Babusso Adel however he informed that he does not possess the acknowledgement copy. It is further the case of the Respondent No. 1 that on 18.11.2010 the Appellant inspected the file/outward register of the year 2003-2004 and it was observed that the said documents or the NOC does not exist. In short, it is the case of Respondent No. 1 that since records were not available, file could not be reconstructed or located.

4. Heard the arguments and perused the records. It is seen that the Appellant vide his application dated 18.09.2009 sought certain information. The said information consisted of three items, that is, 1 to 3. By reply dated 09.10.2009, the Respondent No. 1 furnished the information in respect of point No. 1 and 2. In respect of point No. 3 it was informed that file is not traceable. This reply is in time. Being not satisfied the Appellant preferred the Appeal before the First Appellate Authority. By order dated 06.07.2010 the F.A.A. observed as under:

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The Respondent was directed to reconstruct the file. However, the Respondent has not been able to reconstruct or locate the file.

The Respondent has to fix responsibility on the official responsible for keeping this office record and also to take necessary action as per rules. The Respondent shall conduct necessary inquiry and fix responsibility within a period of 3 months.”

The Respondent No. 1 by letter dated 14.05.2010 informed that he is unable to furnish the copy of the said application.

From all the above it transpires that the said document is not traceable in their office.

5. The File appears to be of recent origin; however, the same is not traceable. If the contention of the Respondent No. 1 is accepted that information cannot be furnished as the same is not traceable then it would be impossible to implement R.T.I. Act. However, it is also a fact that information that is not available cannot be supplied. It is to be noted here that it is obligatory for the Public Authority to maintain the records properly and duly indexed so as to facilitate the Right to Information under R.T.I. Act.

I have perused some of the rulings of Central Information Commission on the point. The rule of law now crystallized by the various rulings of C.I.C as well as S.I.C is that information/document that is not available cannot be supplied. The R.T.I. Act can be invoked only for access to permissible information.

6. Since the file/document is of recent origin and information regarding other points is furnished, a thorough inquiry is to be made regarding the same. In my view higher authorities should hold proper inquiry and bring to book the delinquent officer/official. The Deputy Collector, Quepem is requested to conduct the inquiry.

7. Regarding delay. Considering the application and the reply it cannot be said that there is delay.

8. In view of the above a proper inquiry is to be held and the same should be held by Deputy Collector. This Commission requests the Deputy Collector to hold the inquiry.

Hence, I pass the following Order:

ORDER

The Appeal is allowed. The Dy. 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 Dy. 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

