

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 528/SCIC/2010

Shri . Eusebio Braganza,
H.No. 477, Dongorim,
Navelim, Salcete –Goa.

... Complainant.

V/s
Public Information Officer,
Margao Municipal Council,
Margao –Goa.

... Opponent.

Complainant in person.

Opponent absent. His representative Shri Ajay Dessai present.

ORDER

(17/01/2011)

1. The Complainant, Shri Eusebio Braganza, has filed the present complaint praying that the opponent be directed to provide the information as sought by the Complainant vide application dated 14/05/2010; that opponent be directed to pay penalty and that disciplinary action be initiated against the opponent in terms of services rules applicable to the opponent.

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

That the complainant, vide his application dated 14/05/2010, requested for certain information under Right to Information Act 2005('RTI' Act for short) from the Public Information Officer (PIO)/Opponent. That the information was in respect of Construction activities carried out in and within the jurisdiction of Margao Municipal limit. That the opponent did not make any efforts to provide the information. That aggrieved by the denial to give information the complainant preferred the First Appeal before the First Appellate Authority(FAA). That by order dated 09/07/2010 the opponent was directed to furnish the information within the period of 10 days from the date of the order without charging the fees. It is the case of the complainant that he was not informed about the progress of the order of the FAA nor the opponent complied with the said order and hence the present complaint.

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3. The opponent resists the complaint and the reply is on record. It is the case of the opponent that by letter dated 28/07/2010 the opponent has replied to the request stating that the information sought at Sr. No. (a) pertaining to house No. 776 Shirvodem for which they have not issued any construction Licence to the said house. That regarding information at Sr. No. (b) the efforts are in progress and information will be provided to the complainant as soon as records are traced by the office. It is also the case of the opponent that on account of the renovation work and painting of the building there was reshuffling of its department and some the files from one department got mixed-up and as such there was delay in tracing the file.

4. Heard both sides and perused the records. It is seen that, vide application dated 14/05/2010, the complainant sought certain information from the opponent. The information was in respect of construction licence and conversion sanad, approved plans, etc. That the Respondent did not furnish the information within the stipulated period of thirty days. Aggrieved by the denial/deemed refusal the Appellant preferred the first appeal on 16/06/2010. By order dated 15/07/2010 the FAA/Respondent No. 2 observed as under:-

“Heard the Appellant and the Respondent represented by Junior Engineer Diptesh Dessai. The Appellant has sought information vide letter dated 14/05/2010. The Respondent agreed to furnish the information.

The statutory period is over. Hence, the Respondent shall furnish the information within a period of 10 days from the date of order i.e. 09/07/2010 without charging the fees.”

As per the version of opponent only information at sr. No.(a) has been provided and regarding information at Sr. (b) the records are not traceable and the opponent attributes this to the shifting of office and renovation work and mixing of files.

5. The Municipal Corporation is a custodian of documents. It appears that the said document is not traceable. If this 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 furnished. It is to be noted here that it is obligatory for the Public Information to maintain the record properly and duly cataloged and indexed so as to facilitate the right to information under RTI Act.

In the factual backdrop of this case a thorough inquiry is to be made regarding the same. In my view such an inquiry will help to bring to book the delinquent officer/official. This Commission requests the Deputy Collector to hold this inquiry.

6. Now it is to be seen whether there is any delay. It is seen that application seeking information is dated 14/05/2010. According to the Complainant no reply was furnished. Even in the order of First Appellate Authority it is mentioned as 'statutory period is over'. Apparently there is delay, however, the PIO/Opponent should be given an opportunity to explain about the same in the factual matrix of this case.

7. In view of the above, opponent to make diligent search and trace the same. At the same time if the file is not traceable inquiry is to be held. The Opponent is to be heard on the aspect of penalty. Hence I pass the following order:-

ORDER

The complaint is allowed. The opponent is directed to trace the file/information in respect of point at Sr. No. (b) of the Application of the complainant dated 14/05/2010 within 15 days from the receipt of the order and report compliance.

In case the complaint is not traced within the said period the Dy . Collector Margao to conduct an inquiry regarding the said file/information and to fix responsibility for missing/misplacement of the said file 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 two(2) months.

Issue notice under section 20(1) of the R.T.I. Act to the opponent/Public Information officer 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 28/02/2011. PIO/Opponent shall appear for hearing.

Further, inquiry posted on 28/02/2011 at 10.30 am.

The complaint is accordingly disposed off.

Pronounced in the Commission on this 17th day of January, 2011.

Sd/-
(M. S. kenya)
State Information Commission

