

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No.207/SCIC/2010

Shri Xavier Gomes,
R/o H.No. 41/1, Tuin Bunglow,
Damedem, Tivim,
Bardez-Goa.

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Appellant.

V/S
The Mamlatdar of Bardez,
Mapusa,
Bardez – Goa.

....

Respondent.

Appellant absent.
Respondent present.

J U D G E M E N T
(07/02/2011)

1. Appellant, Xavier Gomes, has filed this Appeal praying that the Respondent may kindly be directed to furnish the required information to the Appellant in terms of the order of lower Court dated 21/07/2010, within such prescribed period as deemed fit and imposed this Hon'ble court; that Respondent be directed to pay an appropriate amount of fine /penalty and other reliefs.

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

That the Appellant, vide his application dated 20/04/2010, sought certain information under Right to Information Act 2005 ('RTI' Act of short) from the Public Information Officer (PIO)/Respondent. That the Respondent did not even bother to furnish the information within the prescribed period as specified under the Act. That the Appellant on several occasions attended the office of the Respondents and requested to furnish the information. That by reply dated 17/06/2010 the Respondent disposed off the application. The Appellant, thereafter, preferred the Appeal and the First Appellate Authority was pleased to allow the appeal and directed the Respondent to furnish the information to the Appellant within 10 days. That in pursuance of the said order the Respondent issued a letter dated 09/08/2010 to the Appellant stating therein that the required information is not

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available in the office of Mamlatdar, Mapusa i.e. the Respondent. That the said reply is misleading, vague, incomplete and false information. That Respondent failed to comply with the order of the FAA. It is the case of the Appellant that the Respondent purposely evaded furnishing the required information sought by the Appellant. Being aggrieved by non-furnishing of information the Appellant has preferred the present appeal on various grounds as set out in the memo of Appeal.

3. The case of the Respondent is fully set out in the reply, which is on record. In short it is the case of the Respondent that after verifying the records the Respondent informed the Appellant vide letter dated 17/06/2010 that the information as sought is not available. Being not satisfied the Appellant preferred the Appeal before the First Appellate Authority wherein the FAA directed the Respondent to issue the information pointwise and by reply dated 09/08/2010 issued the information to the appellant pointwise. It is the case of the Respondent that the information sought by the Appellant was not available in their office. That the Appellant was even allowed to inspect the files, however, the Appellant was not satisfied with the information. That the Respondent made all efforts to issue the information sought by the Appellant. In short it is the case of the Respondent that the information sought by the Appellant is not available in their office.

4. Head the arguments. Adv. S. Sirsat argued on behalf of the Appellant and the Respondent argued in person.

Adv. for the Appellant argued on similar lines as mentioned in the memo of Appeal. According to the Respondent Information is not available.

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 relief prayed is to be granted or not?

It is seen that the Appellant, vide his application dated 20/04/2010 sought certain information from the PIO/Respondent. The information was in respect of a case and the same was of the year 1988. By reply dated 17/06/2010 the respondent informed the Appellant that information in respect of case NoTNC/AIC/33/88 of Village Colvale is not available in their office and that the application stands disposed. It is seen that the Appellant preferred the Appeal before the First Appellant Authority. This Appeal as per records, was filed on 18/06/2010. By order dated 21/07/2010 the appeal was allowed and the PIO was directed to furnish the information as per records available within a period of 10 days. By reply dated 09/08/2010 the Respondent again reiterated that the information is not available.

The main grievance of the Appellant is that the respondent purposely evaded furnishing the required information. This commission even allowed the Appellant to take inspection.

6. The file/Records/Information pertains to the year 1988. However the same is not traceable. The same is in respect of a case being TNC/AK/33/88 of Village Colvale. Normally being records of a case the same ought to have been preserved properly. If the contention, that information cannot be furnished, as the same is not traceable, is accepted then it would be impossible to implement the RTI Act. It is also a fact that information that is not available cannot be furnished. No doubt records are to be well maintained. Moreover, the some pertain to a already disposed case. In any case, as the information sought is not traceable, no obligation on the part of the PIO to disclose the same, as the same cannot be furnished.

I have perused some of the rulings of Central Information Commission on the point. The rule of Law now crytalised by these rulings is that information/document that is not available cannot be furnished. The Right to information Act can be invoked only for access to permissible information.

In my view the higher authorities should hold proper inquiry and bring to book the delinquent officer/official. This Commission requests the Dy. Collector North to conduct the inquiry.

7. The Appellant contends that there is delay in the sense that he was not informed within the stipulated period. It is seen that the application is dated 20/04/2010 and reply is dated 17/06/2010. Apparently there is some delay. However PIO/Respondent should be given an opportunity to explain the same.

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

ORDER

The Appeal is partly allowed. The Dy. Collector North Goa to conduct an inquiry regarding the said file/information and to fix responsibility for misplacement/missing of the said file and initiate action against the delinquent officer/officials including lodging of FIR and/or be suitably penalized as per law. The inquiry to be completed as early as possible preferably within 3 months.

Issue notice under section 20(1) of the Right to Information act to Respondent /PIO to show cause 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 11/03/2011. The Public Information Officer/PIO shall appear for hearing.

Further inquiry posted on 11/03/2011 at 10.30 am.

A copy of the order be sent to Dy. Collector North.

Appeal is accordingly disposed off.

Pronounced in the Commission on this 7th day of February, 2011

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

