

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 64/SIC/2008

In

Appeal No. 56/SIC/2008

Shri Alexinho Monserrate,
Santarbhat, Piedade,
Divar,
Ilhas –Goa

....

Complainant.

V/s

1) The Public Information Officer,
Administrator, Central Zone,
Office of the Comunidades,
Panaji – Goa

....

Opponent No. 1

2) First Appellate Authority,
Addl. Collector,
O/o. Collector North Goa Collectorate,
Panaji – Goa

....

Opponent No. 2

Complainant in person.

Opponents absent.

O R D E R

(14.02.2011)

1. On 16.09.2010 the Complaint, Shri Alexinho Monserrate, has filed this Complaint against non-compliance of Order dated 06.04.2010 passed by Goa State Information Commission in Complaint No. 64/SIC/2008 IN Appeal No. 56/SIC.2008. The Complainant prays that penalty be imposed on the public authority for not acting on the order of the Commission; for not providing the information as well as paying compensation; that the Complainant be further compensated and to direct the Public Information Officer to provide the information as directed in the order dated 06.04.2010.

2. It is the case of the Complaint that the State Information Commission had passed the order on his complaint No. 64/SIC/2008 in Appeal No. 56/SIC/2008 on 06.04.2010. That despite clear cut directives of this Commission, the Public Authorities of Comunidade of Navelim, Tiswadi as well as that of Administration of Comunidades, Central Zone, Panaji has failed to act on the said order till this very date. Hence the present Complaint.

...2/-

3. It is seen that notice was issued to the Opponent to remain present on 30.11.2010 but they did not remain present. Again notices were issued but the Opponents remained absent. Various opportunities were given but the Opponents/Respondents remained absent.

4. Heard the Complainant and perused the records. The Order dated 18.08.2008 passed by State Information Commissioner (Hon'ble Shri G.G. Kambli) reads as under:

“

.....

This plot bears the old Sy. No. and therefore it is not difficult for the Comunidade of Navelim to trace the old records from the concerned department and find out as to how the said plot of land has been recorded in the name of private person in the record of rights. It is seen in the interest of Comunidade of Navelim the Respondent No. 1 shall give direction to the Comunidade of Navelim to find out the circumstances or the basis on which the said plot of land had been recorded in the name of the private person and take appropriate steps in the matter. With these objections the Appeal stands disposed off.”

It is seen that the application seeking information was dated 17.03.2008 and reply was sent on 18.04.2008 stating that information cannot be furnished since required documents are not traceable in the office of Administration of Comunidade, Central Zone, Panaji as well as Comunidade of Navelim.

In pursuance of the order of the First Appellate Authority dated 03.06.2008 again similar view is expressed.

5. It is seen that on 20.01.2009 the Complainant filed the Complaint bearing No. 64/SIC/2008 in Appeal No. 56/SIC/2008 praying for a direction to provide the information as ordered in the Judgment of State Information Commission dated 18.08.2008. That on 31.08.2009 the State Information Commissioner (Hon'ble Shri A. Araujo) passed the Order observing as under:

"Accordingly, the Opponent to give direction to the Clerk/Registrar of Comunidade of Navelim by working out possible aspects involved in this allotment of the land of Comunidade to a private person and submit a detailed report on the circumstances and basis on which the property bearing survey No. 189/7 old plan No. 16158 of Comunidade of Navelim, was recorded in the name of Lucinda Maria G. De Noronha e Menezes. The Opponent to report compliance on 07.10.2009 at 10:30 a.m."

It is seen that on 11.12.2009 the Clerk/Registrar of Comunidades of Navelim in compliance of the Order of the Commission submitted a report in which he states that full charge was not given to him by earlier Clerk and that the particular books are not available though he tried his best to collect the same.

Thereafter Hon'ble State Information Commissioner (Shri Afonso Araujo) passed the Order on 06.04.2010 as under:-

"With these observations the following Order:

- (1) The Escrivao/Registrar to provide the information sought by the Complainant.**
- (2) The Public Authority of Comunidade of Navelim to comply with the mandate of section 4(1) (a) of the R.T.I. Act and maintain all the records duly catalogued and indexed.**
- (3) The Public Authority of Comunidade of Navelim to pay the amount of Rs. 2000/- to the Complainant.**

The Public Authority, Administrator, Central Zone, Panaji, as a controlling authority to ensure that the Public Authorities of the Comunidade of Navelim comply with the Order.

A copy of the order to be sent to the President, Comunidade of Navelim, Divar, Tiswadi Goa."

The Complainant has moved this Commission for non-compliance of this order. As mentioned above the Opponents have not appeared. Hence I am proceeding on the basis of the records.

6. From the records it appears that the said documents/information is not available i.e. not traceable in the office of Opponent.

It is to be noted that Opponent and for that matter Comunidade is the custodian of the documents. It appears from the record that while handing over the charge the same was not given. If the contention 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 it is also a fact that information that is not available cannot be furnished. No doubt records are to be well maintained. In any case, as the information sought is not traceable, no obligation on the part of P.I.O. to disclose the same, as the same cannot be furnished. The Right to Information Act can be invoked only for access to permissible information.

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

ORDER

The Complaint is partly allowed. The Collector of North Goa to conduct an enquiry regarding the said documents i.e. Tombo 1^o , Tombo 2^oB, etc. and to fix responsibility for misplacement/missing of the said books/documents and initiate

action against the delinquent officer/officials including lodging of F.I.R. and/or be suitably penalized as per law. The inquiry be completed as early as possible preferably within two months from the date of receipt of this order and report compliance.

Respondent No. 1/Opponent No. 1 to see that the said amount of compensation of Rs. 2000/- is paid to the Complainant within twenty days from the receipt of this Order.

Copy of the Order be sent to the Collector, North Goa.

The Complaint is accordingly disposed off.

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

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

