GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 406/SIC/2010

Lt. Col. Albin Fernandes (Retd.),
H. No.203, Marna,
Siolim-Goa .... Complainant.

V/s.

1) First Appellate Authority
Block Development Officer-I
Mapusa
Bardez - Goa ... Respondent No.1.

2) Public Information Officer,
Village Panchayat of Siolim-Marna,
Bardez - Goa ... Respondent No. 2.

Complainant in person.
Opponent No. 2 in person.

O R D E R
(11.05.2011)

1. The Complainant, Lt. Col. Albin Fernandes (Retd.), has filed the present Complaint praying that penalty be imposed; that Respondent No. 2 be directed to give the information failing which the matter may be reported to the High Court for contempt of Court under the "Contempt of Court Act".

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

By Judgment and Order dated 11.01.2010 the Hon'ble State Information Commissioner had directed the Respondent No. 2, the Village Panchayat of Siolim Marna to furnish information and file compliance report by 16th February 2010. That the appellant approached the Respondent No. 2, however, he was denied information, notwithstanding the Order of the Hon'ble Commissioner. That the letter issued by Respondent No. 2 is dated 01.02.2010. Hence the present Complaint praying the abovementioned relief.

3. In pursuance of the notice the Opponents appeared. The Opponent No. 2 did not file any reply as such but advanced arguments.

4. Heard the Complaint and Opponent No. 2 and perused the records.

It is seen that in Appeal No. 59/SIC/2009 the Hon'ble State Information Commissioner by Order dated 11.01.2010 directed Respondent No.2 to provide the information sought in request dated 23/03/2008 within a period of 20 days from the date of receipt of the Order. It was also observed that all these documents have to be with the Panchayat Authority.

By letter dated 1/2/2010 the Opponent No.2 informed the Complainant that the said documents are not available or traced in the Panchayat records.

The main contention of the Complainant is that the Order passed by the Commission is not complied with and that information is not furnished. It is to be noted here that under R.T.I. non-existent information cannot be furnished.

The reading of section 2(f) , 2(i) and 2 (j) would indicate that a citizen is entitled for disclosure of information which is in material form with a public authority.

5. Considering the information sought these records ought to have been with the Panchayat. How and in what way they are not is not explained properly. Even otherwise if this contention 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.

6. In my view a thorough inquiry is to be held as to who moved the Court, who paid the legal charges/fees etc. Higher Authorities should hold a proper inquiry and bring to book the delinquent officer/officials.

7. Regarding delay. Here delay is to be considered after the order of this Commission as mentioned above. Reply dated 1/2/2010 is given. Considering this, it cannot be said that there is delay.

8. In view of all the above, a proper inquiry is to be held and the same should be held by Dy. Director of Panchayat, North. This Commission requests the Dy. Director of Panchayat to hold the inquiry. Hence I pass the following order:-

O R D E R

Complainant is allowed partly. The Dy. Director Panchayat North to conduct an enquiry regarding the said information and to fix responsibility for missing of the said information and initiate action against the delinquent officers/person/persons and be suitably penalised as per law.

The inquiry to be completed as early as possible preferable within two months and report compliance.

A copy of this order be sent to the Dy. Director of Panchayat North.

The Complainant is accordingly disposed off.

Pronounced in the Commission on this 11th day of May, 2011.

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