

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 407/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

... Opponent No. 1.

2) Public Information Officer,
Village Panchayat of Siolim-Marna,
Bardez - Goa

... Opponent No. 2.

Complainant in person.
Opponent No. 2 in person

ORDER **(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 Complainant and the Opponent No. 2/P.I.O. and perused the records.

It is seen that in Appeal No. 60/SIC/2009 the Hon'ble State Information Commissioner by Order dated 11.01.2010 directed the Respondent No. 2 to provide the information sought in request dated 02.03.2009 within the period of twenty days from the receipt of the Order and report compliance. It was also observed that all these documents have to be with the Panchayat authority.

By letter dated 01.02.2010 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 Order passed by the Commission is not complied with and that information is not furnished. It is to be noted here that under RTI 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 RTI Act. Further, it is also a fact that information that is not available cannot be furnished.

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

7. Coming to the aspect of delay. Here delay is to be considered after the Order of this Commission as mentioned above. The Order is dated 11.01.2010 and the information to be furnished within a period of twenty days from the receipt of the Order. Reply dated 01.02.2010 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 Panchayats (North) to hold the inquiry. Hence, I pass the following Order:

ORDER

The Complaint is allowed partly. Dy. Director of Panchayats (North) to conduct an inquiry regarding the said information and to fix responsibility for missing of the said information and initiate action against the delinquent officer/person/persons and be suitably penalized as per law.

The inquiry to be completed as early as possible preferably within two months and report compliance. A copy of this Order to be sent to the Dy. Director of Panchayats (North).

Complaint is accordingly disposed off.

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

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