

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 247/SIC/2010

Mr. Oldrin Fernandes,
H. No. 629, Santerxette,
Aldona,
Bardez - Goa

.... Appellant

V/s.

1) Public Information Officer,
Mamlatdar of Bardez,
Mapusa,
Bardez - Goa

... Respondent No. 1.

2) First Appellate Authority,
Dy. Collector & Sub-Divisional Officer,
Mapusa,
Bardez - Goa

... Respondent No. 2.

Appellant in person.
Respondent No. 1 and 2 absent.

J U D G M E N T **(26.05.2011)**

1. The Appellant, Shri Oldrin Fernandes, has filed the present Appeal praying that records be called and Respondent be directed to furnish the information.

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

That the Appellant, vide his application dated 01.07.2010 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer(PIO)/Respondent No. 1. That Respondent No. 1 by letter dated 26.07.2010 gave part information and refused to give complete information. The Appellant thereafter preferred First Appeal before the Respondent No. 2 who by Order dated 18.09.2010 dismissed the Appeal holding that Respondent No. 1 has given the information. That no complete information was furnished. Being aggrieved the Appellant has preferred the present Appeal.

It is further the case of the Appellant that Respondent No. 1 and 2 have violated the provisions of the RTI Act and the reasons given by Respondent No. 2 are illegal. That the observations made by First Appellate Authority that the information is not available is incorrect as the mutation cases are of recent origin and under RTI Act the Public Authority is bound to maintain the information. That therefore, the act of Respondents amounts to refusal of information.

3. The Respondents resist the appeal and their replies are on record. It is the case of Respondent No. 1 that mutation case No. 2537 is not available in the office of Talathi. That information in respect of mutation No. 3619 and 3650 has been furnished to the Appellant and the same has been acknowledged by the Appellant. It is further the case of Respondent No. 1 that they did not refuse to furnish information and that Appellant is aware and has admitted that the said mutation case is not available in the office of Talathi.

It is the case of Respondent No. 2 that during the pendency of the Appeal information in respect of mutation case No. 3650 and 3619 has been given to the Appellant and the Appellant had acknowledged the same. However, information in mutation case No. 2537 could not be furnished to the Appellant as the same is not available in the records. That the Respondent No. 2 also refers to the reply filed by Respondent No. 1. It is further the case of Respondent No. 2 that as per section 2(f) of RTI Act information which is readily available in the records could be provided to the Appellant or the parties seeking information under the RTI Act. That the RTI Act does not cast any responsibility on the Respondent/PIO to create the information to meet the demands of the parties seeking information. According to Respondent No. 2 appeal is liable to be dismissed.

4. Heard the Appellant. Respondents remained absent.

Appellant submitted that information is furnished, however, the same is incomplete, false and misleading. He also submitted about

delay in giving information. According to him there is manipulation in the number.

Written submissions are also on record.

5. I have carefully gone through the records of the case and also considered the arguments. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is seen that the Appellant, vide application dated 01.07.2010, sought certain information from the Respondent No. 1. It appears from the records that information was furnished by reply dated 26.07.2010. According to the Appellant information furnished is incorrect, incomplete and misleading. Being not satisfied the Appellant preferred the Appeal before the First Appellate Authority/Respondent No. 2. By Order dated 18.09.2010 the Respondent No. 2 observed that during the pendency of the Appeal the information in respect of Mutation Case No. 3650, 3619 is being given to the Appellant and the Appellant had acknowledged the same and that no information in Mutation Case No. 2537 could be furnished to the Appellant as the same is not available in the record. It was further observed:-

“In view of the above as the information sought by the Appellant in Mutation Case No. 3650 and 3619 has been furnished to the Appellant and no information furnished by the Respondent in respect of Mutation Case No. 2537 as the same is not available in the records.”

The Appeal was dismissed as the information was not available in the records.

6. It appears that Mutation Case No. 2537 is not traceable. According to the Appellant it is of recent origin. How it is missing is not explained or stated. Missing of file is not uncommon particularly in Government offices, however, one should not forget that certain offices like Respondent No. 1 are the custodians of public records. 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 Public Authority has to maintain the records properly, duly catalogued and properly indexed so as to facilitate information under R.T.I. 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. In any case the concerned Authority should hold proper inquiry and fix responsibility for misplacement of the said file/information and initiate action against the delinquent officer/official.

7. Now it is to be seen whether there is delay in furnishing the information. According to the Appellant there is 68 days delay in furnishing information.

It is seen that application is dated 01.07.2010 and reply furnished is dated 26.07.2010. That means the information is in time. However some information was not traceable and subsequently furnished. In any case Public Information Officer should be given an opportunity to explain the same and the aspect of delay would be considered thereafter in the factual matrix of this case.

8. The Appellant contends that the information is incorrect, incomplete, false, misleading, etc. According to the Respondents it is not so and according to him information furnished is correct.

It is to be noted here that the purpose of the R.T.I. Act is per se to furnish information. Of course Appellant has a right to establish that information furnished to him is false, incorrect, misleading, etc. but the Appellant has to prove it to counter Respondent's claim. The information seeker must feel that he got the true and correct information otherwise purpose of R.T.I. Act would be defeated. It is

pertinent to note that mandate of R.T.I. Act is to provide information – information correct to the core and it is for the Appellant to establish that what he has received is incorrect and incomplete. The approach of the Commission is to attenuate the area of secrecy as much as possible. With this view in mind, I am of the opinion that the Appellant must be given an opportunity to substantiate that the information given to him is incomplete, incorrect, misleading, etc. as provided in section 18(1) of the R.T.I. Act.

9. In view of the above, the Respondent No. 1 is to be heard on the aspect of delay. The Appellant should be given an opportunity to prove that the information is incomplete, incorrect, misleading, etc. Hence, I pass the following Order:-

ORDER

The Appeal is partly allowed. Issue notice under section 20(1) of the R.T.I. Act to Respondent No. 1/Public Information Officer 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 28.06.2011. Public Information Officer/Respondent No. 1 shall appear for hearing.

The Appellant to prove that information furnished is false, incomplete, incorrect, misleading, etc.

Further inquiry posted on 28.06.2011 at 10:30a.m.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 26th day of May, 2011.

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

