

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 79/SIC/2011

Mr. Oldrin Pereira,
H. No. 629, Santerxette,
Aldona,
Bardez – Goa ... Complainant.

V/s.

Public Information Officer,
Secretary,
Village Panchayat Aldona,
Bardez – Goa ... Opponent.

Complainant in person.
Opponent in person.

O R D E R
(28.06.2011)

1. The Complainant, Shri Oldrin Pereira, has filed the present Complaint praying that the Opponent be directed to furnish information and to impose penalty for denial of information on the basis of non-availability of records.

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

That the Complainant, vide his application dated 22.03.2011 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (PIO)/Opponent. That the Opponent by letter dated 29.03.2011 refused to give information citing that he "tried his level best but he could not find the construction file, so he is not able to furnish the information sought by the Complainant." Being aggrieved the Complainant has preferred the present Complaint. It is the case of the Complainant that the Opponent has violated the provisions of RTI Act; that the reasons given are incorrect and, therefore, act of Opponent amount to refusal of information. That the Opponent has to maintain the records under section 4(1)(a) of the Act.

3. In pursuance of the notice the Opponent appeared. He did not file any reply as such, however, he made submissions.

4. Heard both sides and perused the records. It is seen that the Complainant, vide his application dated 22.03.2011 sought certain information from the Opponent. By letter dated 29.03.2011 the Opponent furnished the information. As per reply the said files could not be found and as such he could not furnish the information.

It appears that the said files/information is not found and/or traceable in the office of the Opponent.

5. As per the Complaint and arguments of the Complainant the files appears to be of recent origin, however, the same could not be found. If the contention is accepted that information cannot be furnished as the same is not found/traceable then it would be impossible to implement R.T.I. Act. However, it is also a fact that the information that is not available cannot be supplied. No doubt records are to be well maintained duly catalogued and indexed. Besides, institutions like Panchayat, Municipal Corporations are custodians of public records. 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.

I have perused some of the rulings of Central Commission on the point. The rule of law now crystallized 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 higher authorities should hold proper inquiry and bring to book the delinquent officer/official.

6. Before parting with this Complaint it is seen that the Complainant has directly approached the Commission without approaching the F.A.A. Normally, in

the factual backdrop of this case the Complaint is not maintainable. However, in the R.T.I. spirit the same is entertained today. Complainant to take note of the same in future.

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

ORDER

The Complaint is partly allowed. The Block Development Officer (BDO) is hereby requested to conduct inquiry regarding the said file/information and to fix responsibility for not finding the said file/information and initiate action against the delinquent officer/officials including lodging of FIR and/or to suitably penalize as per law.

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

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 28th day of June, 2011.

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