

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 47/SIC/2010

Shri Peter Fernandes,
Moicowadda-Pilerne,
Bardez - Goa

... Appellant

V/s.

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

.... Respondent No. 1.

2) First Appellate Authority,
Dy. Collector of Bardez,
Mapusa - Goa

... Respondent No. 2.

Adv. Shri A. Mandrekar for the Appellant.
Respondent No. 1 in person.

J U D G M E N T
(13.07.2011)

1. The Appellant, Shri Peter Fernandes, has filed the present Appeal praying that the Respondent No. 1 be directed to furnish the information as requested by the Appellant in his application dated 04.09.2009 correctly and fully without reserving any information to save any person; that action be taken on the Public Information Officer (PIO)/Respondent No. 1 for not providing full information and inspection of records within stipulated time limit of thirty days; that penalty be imposed on the PIO for not providing the information and destroying the information as per section 20 of the RTI Act; that disciplinary action be initiated against the PIO; that compensation may be given to the Appellant and that no fees be charged under section 7(6) of the RTI Act, 2005.

2. The brief facts leading to the present Appeal are as under:-
That the Appellant, vide his application dated 04.09.2009 sought certain information under Right To Information Act, 2005 ('RTI Act' for short) from the Public Information Officer (PIO)/Respondent

No. 1. That the application dated 04.09.2009 was complete in all respects and was submitted in person and the same was reluctantly accepted in the office of PIO/Respondent No. 1. That an unsatisfactory reply dated 13.10.2009 was received from the Respondent No. 1. That the Appellant being not satisfied, preferred Appeal before the First Appellate Authority (FAA)/Respondent No. 2. That an unsatisfactory reply dated 26.11.2009 was filed by the PIO/Respondent No. 1. That the FAA passed Judgment and Order dated 05.01.2010 directing the Respondent No. 1 to furnish the required information as per the application dated 04.09.2009 within 15 days. That the Respondent No. 1 through reply/letter dated 27.01.2010 has refused to comply with the orders of the Respondent No. 2 as Respondent No. 1 has deliberately destroyed the information with the malafide intention to deny the information and as such he has not complied with the Orders of FAA/Respondent No. 2 to provide the complete and correct information within the time limit specified in the Order passed in the First Appeal. That the PIO failed to give due consideration to the Judgment and Order passed by Respondent No. 2. In short, it is the case of the Appellant that the information has not been furnished nor any inspection of records have been permitted till date and as such it amounts to deemed refusal under section 7(2) of the RTI Act. Being aggrieved the Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and their replies are on record. It is the case of Respondent No. 1 that whatever information is available in the office has been provided to the Appellant. That vide letter dated 27.01.2010 the Appellant was informed that enumeration pads are destroyed by the rats and therefore it is not possible to issue copy of enumeration pads. According to Respondent No.1 the Appeal is liable to be dismissed.

The case of Respondent No. 2 is set out in the reply which is on record. In short, it is the case of Respondent No. 2 that Appellant

has preferred First Appeal dated 06.11.2009 and that notice was issued to the Respondent No. 1 to remain present and file his say on 19.11.2009. That on 26.11.2009 the Respondent No. 1 filed his reply stating that Respondent No. 1 had furnished the information to the Appellant vide letter dated 13.10.2009. That whether it serves the purpose of application dated 04.09.2009 the same was not mentioned by the Appellant in the application for what purpose the said information is required. That the voters' list have been prepared during the intensive period held in the year 2005-06 by the enumerators for doing house-to-house enumeration and the names have been enlisted in the electoral roll of the year 2006. That enumerators had done house-to-house survey to get the names of the persons residing in the house and the same are included in the voters' list and hence, no documents are required to be produced during the intensive period and hence question of supplying the same does not arise. That the person who is the ordinary resident of one particular period of six months can get his name enrolled in the voters' list. However, during the intensive revision the enumerators have filed the data which can be given to the Appellant. It is the case of Respondent No. 2 that the Appeal was partly allowed vide Order dated 05.01.2010 thereby directing the Respondent No. 1 to furnish the copy of enumeration list, i.e. house-to-house survey carried by the enumerators to the Appellant within the period of two weeks from the date of receipt of the Order. It is also the case of Respondent No. 2 that Respondent No. 1 vide letter dated 27.01.2010 has sent the reply to the Appellant and the copy of the same was endorsed to the Respondent No. 2 stating that he has conducted the thorough search to check the enumeration list, i.e. house-to-house survey carried by the enumerators. However, it was found that enumeration pads which were kept on cupboard and trunks are destroyed by the rats. That in view of this it is not possible to show the said records or enumeration pads. However the data entered in the enumeration pads has been transferred on the electoral roll published in that year. In short, according to

Respondent No. 2 whatever information held by the Respondent has been already provided to the Appellant and that the Appeal does not have any substance and hence be dismissed.

4. Heard the arguments. The learned Adv. Shri Atish Mandrekar argued on behalf of Appellant and Respondent No. 1 argued in person. Both sides have filed written arguments which are on record. According to the Advocate for Appellant, no information has been furnished. He also submitted that proper inquiry be conducted in respect of records being destroyed. Respondent No. 1 submitted that there is no delay. According to him whatever information was available was furnished.

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

It is seen that the information was sought by application dated 04.09.2009. The information related to the eligibility of voters who fall in particular wards contained in the Assembly Constituency of Saligao. By letter dated 01.10.2009 the P.I.O./Respondent No. 1 informed the Appellant to collect the information on payment of necessary fees. It appears payment was made on 13.10.2009 and information was furnished by letter dated 13.10.2009. Considering this whatever information was furnished, was furnished in time.

Being not satisfied the Appellant preferred Appeal before the First Appellate Authority. The Appeal was disposed off by Order dated 05.01.2010. The F.A.A. observed as under:-

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..... The Voters list have been prepared during the intensive period held in the year 2005-2006 by the enumerators after doing house to house enumeration and the names have been enlisted in the Electoral Roll of the year 2006.

The enumerators had done house to house Survey and gets the names of the person residing in the house and same included in the voters list and hence no documents are required to be produced during the Intensive Revision and hence the question of supplying the same does not arise. The person who is the ordinary resident of on particular period of 6 months can get his name enrolled in the voter's list. However, during the Intensive Revision the enumerators has filled the data which can be very well given to the Appellant which can serve as purpose. In view of the above the appeal filed by the Appellant is partly deserves to be allowed.

In view of the above I pass the following Order:-

ORDER

The Appeal dated 19/11/2009 filed by the Appellant is partly allowed.

The Respondent/PIO is hereby directed to furnish the copies of enumeration list i.e. house to house Survey carried by the enumerators to the Appellant within the period of 2 weeks from the date of receipt of this Order.”

The F.A.A. has mentioned about the procedure followed. The F.A.A. directed to furnish the enumeration list, i.e. house-to-house survey carried by the enumerators. From the application of the Appellant it is seen that the enumeration list has not been asked by the Appellant. No fresh information can be granted at the Appellate stage. In any case, the said relief was granted by order dated 05.01.2010.

By letter dated 27.01.2010 the PIO/Respondent No. 1 replied that a thorough search was conducted to check the enumeration list, that is, house-to-house survey carried out by enumerators, however,

it is found that the enumeration pads which were kept on the cupboard and trunk are destroyed by rats. Hence, could not be provided.

6. From the Memo of Appeal as well as the written arguments of the appellant it is the contention of the Appellant that the Respondent No. 1 has deliberately destroyed the information. Whereas according to the Respondent No. 1 the same was eaten by rats. This means one thing is clear that the said information is not available with the Respondent No. 1. This fact is not in dispute in view of this contention. The only thing to be seen is whether the same is deliberately destroyed or was eaten by rats. Para 7 of the written arguments of Respondent No. 1 shows that the issue figured in the Goa Legislative Assembly and also reply to the same.

7. The documents are of recent origin, however, the same are not available. It is to be noted that office of Respondent No. 1 is the custodian of public documents. If such types of contentions are accepted 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. It is high time that authorities comply section 4 of the R.T.I. Act.

I have perused some of the rulings of the Central Information 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.

8. I have carefully gone through the decisions cited by the Advocate for the Appellant the Xerox copies of which are on record. However, the same are in a different context. In the case before me the issue is different as pointed herein above. According to the

Appellant the records are destroyed whereas according to the Respondent No. 1 the same were destroyed by rats.

9. I do agree with the Respondent No.1 that enumeration list was not asked by the Appellant though granted by F.A.A. Normally, this Commission would not have interfered in the matter. However, since the Appellant contends that it is deliberately destroyed it would be proper that higher authority should hold proper inquiry. This is being done only to wipe out the doubt, if any, in the mind of the information seekers in general and Appellant in particular.

10. Coming to the prayers, available information has been furnished. The question of penalty does not arise as letter to pay the fees was on 04.10.2009 and Appellant paid on 13.10.2009 and information was given by letter dated 13.10.2009.

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

ORDER

The Appeal is partly allowed. The Additional Collector, North Goa-I or II is requested to conduct an inquiry as to whether the same were deliberately destroyed or eaten by rats and if deliberately destroyed, to fix responsibility for the same and initiate action against the concerned officer and/or is suitably penalized as per law. The inquiry to be completed as early as possible preferably within 2 months and report compliance.

Appeal is accordingly disposed off.

Pronounced in the Commission on this 13th day of July, 2011.

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

