

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No.266/SIC/2010

Mr. Agnelo Colaco,
Son of late John Calaco,
Aged 64 years, service,
Resident of H.No.354/2,
Ancur Luis Carmona,
Salcete-Goa
Attorney of Comunidade of Velim,
Salcete-Goa

... Appellant.

V/s

1) The Public Information Officer,
Office of the Joint Mamlatdar -II of Salcete,
Margao-Goa.

... Respondent No.1

2) The First Appellate Authority,
Office of the Mamlatdar of Salcete,
Margao-Goa.

... Respondent No.2

Appellant in Person
Respondent No.1 present
Respondent No.2 absent

JUDGEMENT
(08/07/2011)

1. The Appellant, Shri Agnelo Colaco, has filed the present appeal praying that the Respondent No.1 be directed to furnish the information asked for by the Appellant by application dated 12/07/2010, that necessary enquiry be ordered against Respondent No.1 and 2 for not furnishing information sought for and the Respondent No.1 and 2 be directed to pay compensation to the Appellants as envisaged under Right to Information Act, 2005.

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

That the Appellant had filed an application dated 12/07/2010, seeking certain information under Right to

Information Act, 2005 (R.T.I. Act for short) from the Public Information Officer(P.I.O.)/Respondent No.1. That till date no information has been furnished by the Respondent as prescribed under R.T.I. Act. That the Appellant, thereafter, personally approached the Respondent No.1 and informed the Respondent No.1 that the information is necessary, however, the Respondent No.1 failed to furnish the information sought for and as such the Appellant filed the first Appeal before the First Appellate Authority i.e the Respondent No.2, on 16/08/2010, but till date failed to furnish the information and hear the said appeal. Being aggrieved the Appellant has filed the present appeal on the grounds as set out in the memo of appeal.

3. The Respondent resists the Appeal and their replies are on records. It is the case of the Respondent No.1 that upon receipt of the application under R.T.I. from the Appellant, the Respondent no.1 issued a letter to the Appellant to remain present in his office on any working day. That the Respondent No.1 with the assistance of his court clerk thoroughly checked all the records of the Court of JM-II, however the required documents have not been traceable after due search by the court clerk. That the Respondent no.1 by Registered A.D. addressed a letter to the Appellant stating that the file bearing case no. TNC/JM-II/PUR/20/2001 could not be traced in spite of due diligence and enclosed the declaration order passed in the case NO.TNC/JM-II/60/2000 for the information of the Appellant. It is the case of Respondent No.1 that Respondent No.1 has made all the efforts to trace out the file but could not get the fruitful results of the search as the records pertaining

to case no.TNC.JM-II/PUR/20/2001 is not traceable in the records of the court of Joint Mamlatdar II Salcete.

It is the case of the Respondent No.2 that the Appeal filed by the Appellant is not maintainable, since the Respondent No.2 is not designated first Appellate Authority under R.T.I. Act. On merits it is the case of the Respondent No.2, that the Appellant asked some information pertaining to the Tenancy case of the Joint Mamlatdar II. That as per Roaster maintained by their office the court cases are marked to all the four courts of Salcete Taluka and therefore any information/ certified copies of records and proceedings has to be issued by concerned presiding officer with the order of the court. That the information asked by the Appellant was transferred to the court of Joint Mamlatdar II for providing information as routine procedure. That a reply has been already sent to the Appellant in response to his application dated 16/08/2010. According to the Respondent No.2 appeal is liable to be dismissed.

4. Heard the arguments of the Appellant and the Respondent No.1 I have carefully gone through the records of the case and also considered the arguments advanced by the parties. It is to be seen whether the relief prayed is to be granted or not

First I shall deal with the application for condonation of delay. It is to be seen whether there is delay in filing the second appeal and whether the same is liable to be condoned. According to the appellant there is delay of 30 days. Application seeking information is filed on 12/07/2010. Since information is not furnished the Appeal is filed on 16/08/2010. This is in time. The first Appellate Authority, as per law/R.T.I. Act should dispose the same within 30 days or within 45 days with reason. Since order is not passed, the period for second

appeal starts after 30 days. i.e from 15/16-09-2010. As per section 19(3) the second appeal is to be filed within 90 days from the date of order. The second appeal is filed on 19/11/2010. Considering this the appeal filed is within time.

5. Coming to the information sought. It is seen that by application dated 12/07/2010 the Appellant sought certain information from the P.I.O. office of Mamlatdar of Salcete. As pointed herein above, no information is furnished according to Appellant. Again Appeal was preferred but the same was not decided as per the version of Appellant. By letter dated 6/01/2011 the Mamlatdar of Salcete informed the Appellant that the application was transferred to the court of joint Mamlatdar -II since the information/ records of all the court cases is available with them. It appears from the records that the information sought is not available and as such could not be furnished. Whatever available was furnished. According Respondent No.1 the information sought is not available.

6. The file and/or case appears to be of recent origin, however, the same is not traceable. How and in what way it is missing is not explained or stated. If the contention, that information cannot be furnished as the same is not traceable is 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. 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 Information Commission on the point. The rule of law now crystallized by these rulings is that information/documents that is not available

cannot be supplied. The Right to Information Act can be invoked only for access to permissible information.

However, the facts remain that Public Authorities like Respondent No.1 are custodians of public records. Therefore, in my view higher authorities should hold proper inquiry and bring to book the delinquent officer/Officials.

7. In the case before me the application is dated 12/07/2010 addressed to P.I.O. officer of Mamlatdar Salcete, by letter dated 06/01/2011, the same is transferred to Joint Mamlatdar-II by the Mamlatadr. Normally the application ought to have been transferred as early as possible but within 5 days. This has not been done. Appeal was filed to P.I.O. office of the Joint Mamlatdar -II of Salcete. Margao-Goa. The present appeal if filed against P.I.O. office of the Joint Mamlatdar-II and the First Appellate Authority i.e Mamlatdar of Salcete. In his reply Mamlatdar states that he is not the First Appellate Authority under R.T.I. Act. In view of all this it appears that delay has occurred. In any case the same is perhaps due to non - appreciation of the provisions of the R.T.I. Act. Hence the same is condoned. However, P.I.O. in future should act strictly in accordance with law P.I.O. should disclose about F.A.A. Appellant on his part should see that proper and necessary parties are joined.

8. In view of all this. I pass the following order.

ORDER

The appeal is partly allowed The Mamlatdar of Salcete to conduct an inquiry regarding the said file/case/information and to fix responsibility for misplacement/missing of the said file/case/information and initiate action against the delinquent

officer/Officials including lodging of F.I.R. and /or be suitably penalized as per law. The inquiry to be completed as early as possible preferably within 3 months and report compliance.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 8th day of July 2011.

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

