

**GOA STATE INFORMATION COMMISSION**  
**AT PANAJI**

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

**Appeal No.279-SCIC-2010**

Mr.Francisco Xavier H. Pereira,  
Nr. The Church, Moraileum,  
Curchorem-Goa

...Appellant.

V/s

1)The Chief Officer,  
Shri Sudin A. Natu,  
Public Information Officer,  
Curchorem-Cacora Municipal Council,  
Curchorem-Goa.

... Respondent

Appellant in Person  
Respondent absent

**JUDGEMENT**  
**(18-07-2011)**

1. The Appellant, Shri Francisco Xavier N Pereira, has filed the present Appeal praying that the Respondent be directed to furnish the information sought by the Appellant.

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

That the Appellant vide his application dated 20/04/2010, sought certain information under Right to information Act, 2005 (R.T.I. Act for short) from the Respondent/Public Information Officer (P.I.O.). That by reply dated 09/06/2010, the Appellant was informed by the Respondent that only one copy of the lease agreement of shop No.5 was available and the same was furnished and that lease agreements of other 4 shops were not in his records. That on 26/07/2010 the Appellant filed another application before the respondent informing the Respondent that the lease Agreement of other four shops were very important to him and that the same be furnished. That on

6/8/2010, the Appellant filed a reminder reminding about the same and requesting to furnish the information. That on 09/09/2010, the Respondent informed the Appellant that non-availability of lease agreements of other four shops were under examination. Being not satisfied the Appellant preferred an appeal before the First Appellate Authority. That by order dated 06/10/2010 the First Appellate Authority directed the Respondent to furnish the information sought by the Appellant within 30 days without charging fees. Being aggrieved the Appellant has preferred the present Appeal on various ground as set out in the memo of Appeal.

3. The Respondent resists the Appeal and the reply is on records. It is the case of the Respondent that on receipt of the Application the Respondent tried to locate the information, however, in vain except for that of Smt. Andrea Diniz. That on 12/10/2010 letter was issued to Shri Laxman Madgoankar, Shri Anjumantuula Shaikh, Shri Shantaram Naik, directing them to produce the copy of lease agreement. That only Shri Laximan Madgonkar submitted the copy of lease Agreement. That the Respondent has not intentionally suppressed the information but the same is not available in the office of Respondent. That the delay in furnishing the information is not intentional According to the Respondent. Appeal is liable to be dismissed.

4. Written arguments in reference to the reply of the Respondent filed by the Appellant are on records.

5. Heard the Arguments of Appellant. Respondent remained absent though opportunity given. I have also perused the written arguments on records.

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

It is seen that by application dated 20/04/2010, the Appellant sought certain information from the Respondent/P.I.O. The information was in connection with some lease deeds of the five shops etc. By reply dated 9/6/2010, the Chief officers informed the Appellant that information in respect of point No.1 and 3 is not available and only one copy of lease agreement was enclosed. Being not satisfied the Appellant preferred Appeals before First appellate Authority. The First Appellate Authority ordered as under:-

“ Heard the Appellant and Respondent, Smt. Ujjaini, Head Clerk of Curchorem-Cacora-Municipal Council. The Appellant has sought information on lease agreement documents of 5 shops. The Respondent, Curchorem, Municipal Council has to make all the visible efforts and make it available to the appellant within a period of 30 days without charging fees.”

By letter dated 09/09/2010, the Respondent/Chief Officer informed the Appellant that copy of lease Agreement of shop no.5 is already furnished and the matter of non -availability of lease agreement copies of other four shops is under examination.

As per the case of the Respondent the said documents are not available. They tried to find from the parties but could not get the same According to Respondent all documents and goods were thrown out during the riots of 2003. In short the information sought is not available in the office of the Respondent.

7. The Documents sought are important as far as Respondent is concerned as the same concerns the lease deeds. Moreover the Corporation is the custodian of public documents. However, according to the Respondent the same is not available. 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 ruling of the 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 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/officials.

8. The Appellant contends that there is delay in the sense that he was not informed within the stipulated period of thirty days. The First Appellate Authority ordered to furnish information free of charge. It is seen that the Application is dated 20/04/2010 and the reply is dated 09/06/2010. Apparently there is delay. In any case the Public Information Officer should be given an opportunity to explain the same.

9. In view of all the above, I am of the opinion that proper inquiry about lease deeds is to be conducted and the P.I.O.

should be given an opportunity to explain about delay. Hence I pass the following order.

**ORDER**

Appeal is partly allowed. The Dy. Director of Municipal Administration to conduct an inquiry regarding the said deeds firstly whether the same were at all executed and also about non-availability of the same and to fix responsibility for misplacement of the said deeds/documents and initiate action against the delinquent officer/Officials and/or be suitably penalize as per law. The inquiry to be completed as early as possible preferably within 3 months and report compliance.

Issue notice under section 20(1) of the Right to Information Act to Respondent/P.I.O. 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 29/08/2011. Public Information Officer/Respondent shall appeal for hearing.

Further inquiry posted on 29-08-2011 at 10.30 a.m.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 18<sup>th</sup> day of July 2011.

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





