

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 170/SIC/2010

Shri Wilson B. L. D'Silva,
Mulund (E),
Mumbai - 400 081 ... Appellant

V/s.

- 1). Public Information Officer,
Mr. R.D. Mirajkar,
Dy. Director of Panchayat (North),
Panaji ez - Goa Respondent No. 1.
- 2) First Appellate Authority,
Menino D'Souza,
Directorate of Panchayat,
Panaji - Goa ... Respondent No. 2.

Appellant in person
Respondent No. 1 in person.

J U D G M E N T
(15.07.2011)

1. The Appellant, Shri Wilson B. L. D'Silva, has filed the present Appeal praying that information sought be furnished and that correct information be furnished.

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

That the Appellant, vide application dated 27.11.2011 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 one foreigner Shri Sydney E Duke residing at Carxeta, Velim, Salcete-Goa filed a Writ Petition No. 139/2008 in the Hon'ble High Court of Judicature at Bombay Goa Bench, with false grounds against Velim Panchayat and others. That in the said petition counsel for Respondents submitted that request of the Petitioner for issuance of Occupancy Certificate would be considered and accordingly petition was disposed off. That later on the Village Panchayat issued and asked for inquiry, etc. Against this backdrop the Appellant had sought certain information under R.T.I. Act. That no action was taken and deliberately copy of Writ Petition was not given. That the

Order of the First Appellate Authority is not proper and just. Being aggrieved the Appellant has preferred the present Appeal.

3. The Respondents resist the Appeal and the reply of the Respondent No. 2 is on record. It is the case of the Respondent No. 2 that the Appeal was made by the appellant. That vide his Appeal before the Respondent No. 2, the Appellant has stated that certain information sought by him vide his application dated 27.11.2009 to the Public Information officer was not furnished and that the Public Information Officer has not replied satisfactorily to his queries. That the Appeal was heard and disposed by the Respondent No. 2. It is further the case of the Respondent No. 2 that the Respondent No. 2 has dealt with the Appeal filed before him in the capacity of First Appellate Authority and disposed off the Appeal in accordance with the provisions of Right to Information Act and that there is no deliberate attempt to deny the information sought by the Appellant. That the present Appeal is without any merits and deserves to be dismissed.

4. Heard the arguments of the Appellant and Respondent No. 1. The Appellant referred to the facts of the case in detail. According to him, noting not given fully but only in part. He next submitted that Writ Petition must be there in the file as copy was sent to the Deputy Director of Panchayat (South). He also submitted that the Appellant has not given the reasons. According to him information given is incomplete.

During the course of his arguments the Respondent No. 1 submitted that all the available information is furnished. That the copy of the Writ Petition was not sent and the operative part of the Order is on record.

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 information is furnished and whether the same is furnished in time?

It is seen that the Appellant sought information, vide his application dated 27.11.2009. By reply dated 18.12.2009 the Respondent No. 1 furnished the information. I have perused the application seeking information as well as information furnished.

It appears that Director -Panchayats was not a party to the said Writ Petition No. 139/2008 before the Hon'ble High Court. The only grievance of the Appellant is that copy of Writ Petition has not been furnished to him. This has been mentioned also in his written submissions which are on record. I need not refer to the same in detail.

At the outset I must say that the rule of law, now crystallized by various ruling of Central Information Commission, 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.

6. Now it is to be seen whether the Writ Petition was at all available with Respondent No. 1. Letter dated 09.07.2009 from Smt. Shabari Manjrekar, Dy. Director of Panchayats, South Goa, Margao to Director of Panchayats mentions as under:-

“
.....
So this office vide letter No. 70(3)/95-DDPS (Vol.I)/Part file/649 dated 23.04.2008 requested your office to get the details of the Writ Petition filed by Sydney Eric Duke
.....
Accordingly vide your office letter No. Writ petition No. 139/2008/1887 dated 19.05.2008 this office received the copy of the Writ Petition filed by Mr. Sydney Eric Duke v/s. Village Panchayat, Velim & Others.”

The copy of the letter was sent to the Appellant.

From the above it is clear that copy of the Writ Petition was sent to the D.D.P. (South).

There is another letter dated 08.1.2010 from Pravin M. S. Barad, Deputy Director of Panchayats, South Goa, Margao, to the Appellant herein mentions as under:- “.....

This is to inform you that said copy of the Writ Petition No. 139/2008 which is received from the Director of Panchayats, Panaji to this office is presently not available

In short, the copy of the Writ Petition is not available on records though Director of Panchayat himself sent the same to the Dy. D.P. South.

7. Another argument of the Appellant is regarding the noting. According to him it is incomplete. The noting produced by the Appellant is blank on the reverse side. Whereas the documents produced by the Respondents shows that there is some writing on the back side of the same. This could be by inadvertence. In any case P.I.O should give complete information.

8. In my view the P.I.O. to see that a thorough search be made and the copy of the Writ Petition be traced and copy be furnished to the Appellant. In case it is not traced proper inquiry be held by Director or any Officer appointed by him about the missing copy.

9. Now it is to be seen whether there is any delay in furnishing information.

Considering the application and the reply filed I do not find any delay in furnishing information.

10. In view of the above the request of the Appellant is to be partly granted. Hence, I pass the following Order:-

ORDER

The Appeal is partly allowed. The Respondent No. 1 is hereby directed to furnish the full file notings taken on his letter dated 13.04.2009 as sought vide point (d) of his application dated 27.11.2009 within 20 days from the date of receipt of the Order. The Respondent No. 1 is further directed to take a thorough search and the copy of the Writ Petition be traced out and furnish the copy of the same to the Appellant within 20 days from the date of receipt of the Order. In case the same is not traced then the Director or any Officer appointed by him to conduct inquiry, fix

responsibility about misplacement and/or missing copy. The inquiry to be completed within 2 months and report compliance.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 15th day of July, 2011.

(M. S. Keny)
State Chief Information Commissioner

