

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 4/SCIC/2011

Mr. Xavier F. Saldanha,
St. Francis Ward,
St. Estevam,
Ilhas - Goa

.... Appellant

V/s.

1) Public Information Officer,
Mamlatdar of Ponda Taluka,
Ponda - Goa

.... Respondent No. 1.

2) First Appellate Authority,
Deputy Collector & SDO.,
Ponda Sub Division,
Ponda - Goa

.... Respondent No. 2.

Ms. Daliza Silveira, representative of the Appellant.

Shri S. H. Naik, representative of Respondent No. 1 and 2.

J U D G M E N T **(24.08.2011)**

1. The Appellant, Shri Xavier F. Saldanha, has filed the present Appeal praying that Public information Officer/Mamlatdar of Ponda be again directed to furnish the information asked and that penalty be imposed for not providing the information within specified time.

2. The case of the Appellant is fully set out in the Memo of Appeal. In short, it is the case of the Appellant that the Appellant vide application dated 22.04.2010 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Mamlatdar, Ponda, Public Information Officer (PIO)/Respondent No. 1. That the Head Clerk of the PIO/Mamlatdar of Ponda informed that reply is sent to him by post but till date nothing has been received. Being not satisfied the Appellant preferred an Appeal before the Dy. Collector/First Appellate Authority (FAA)/Respondent No. 2 vide his letter dated 08.10.2010. That the Dy. Collector by Order dated 09.12.2010 directed the PIO to furnish the relevant information within a period of 15 days from the date of the Order. However, the

PIO till date did not furnish the information. Being aggrieved by the non-action of the PIO the Appellant has preferred the present Appeal.

3. The Respondents resist the Appeal and the reply of Respondent No. 1 is on record. It is the case of the Respondent No. 1 that the Appellant had filed an application seeking information with regard to property documents of mutation file No. 13041. That the reply was sent vide letter dated 20.05.2010 stating that the file is not traceable and when it is found he will be intimated. The Respondent No. 1 admits about First Appeal and order passed by FAA. That in pursuance of the order passed copy of form No. IX was kept ready in the office but the same was not collected. It is the case of the Respondent No. 1 that as soon as the application was received, concerned Talathi for mutation was directed to furnish the information however, the said Talathi vide her reply dated 02.07.2010 stated that file No. 13041 could not be traced which was intimated to the Appellant. That there was no malafide intention on the part of the office of Respondent No. 1 not to give information to the Appellant but it is only due to non-availability of the file in hand, information could not be provided to the Appellant. That every hard efforts were made after the passing of the order by the Dy. Collector to trace the file but inspite of this case file is not traced. It is further the case of the Respondent No. 1 that as per their computer record their office can furnish the copy of Form No. IX and that Mutation was carried out on the basis of Deed of Succession dated 29.04.2004 drawn in the book No. 682 in the office of the Civil Registrar-cum-Sub-Registrar and Notary Ex-Officio, Panaji-Goa. In short, it is the case of the Respondent No. 1 that the information could not be provided to the Appellant and that there was no deliberate intention on the part of his office not to furnish information.

4. Reply of the Appellant dated 16.05.2011 filed on 16.06.2011 is in on record. According to the Appellant the reply of the Respondent No. 1 is totally false. That the PIO did not intimate the Appellant by

letter dated 20.05.2010. That the Appellant is a senior citizen and he has sent his authorized representative on 25.05.2010 in the PIO's office and thereafter he also sent his representative however, no information was furnished. That the statements that the form No. IX was kept ready but not collected is not correct and that form No. IX was made ready on 02.05.2011 and that this can be seen on the copy of the same as provided by the PIO.

5. It is seen that in pursuance of the notice the PIO/Respondent No. 1 did not appear. However, his representative Shri S. H. Naik appeared.

6. Heard the Appellant and perused the records. It is seen that the application seeking information is dated 22.04.2010 as received in the office of the Respondent No. 1. As per the application the information sought is regarding property documents of mutation file No. 13041 of property bearing Survey No. 132/2 situated at Khandola Village of Ponda taluka. It appears that the same was not furnished and on 08.10.2010 the Appellant preferred Appeal before the FAA. The FAA passed the order on 09.12.2010 thereby directing the Mamlatdar to furnish the relevant information within a period of 15 days from the date of the order. Since the information was not furnished the Appellant landed in this Commission.

According to the Respondent No. 1 that the said file is not traceable. The Appellant submits that the part information, form No. IX was furnished but after much delay.

7. The file appears to be of recent origin, however, same is not traceable. If the contention that information cannot be furnished as the same is not traceable is accepted then it would be impossible to implement the RTI Act. However, it is also a fact that information that is not available cannot be furnished. No doubt records are to be well maintained. Besides, office of Respondent No. 1 is the custodian of public records.

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/documents that is not available cannot be furnished. The RTI Act can be invoked only for access to permissible information

In any case Mamlatdar, as Head of the concerned Department, should hold inquiry, fix responsibility about missing of the file and initiate action including lodging of F.I.R.

8. Now it is to be seen whether there is any delay.

According to the Appellant he was not informed and part of the information was furnished after much delay. According to the PIO information was kept but not collected. In any case the PIO/Respondent No. 1 should be given an opportunity to explain the same.

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

ORDER

Appeal is partly allowed. Issue notice under section 20(1) of the Right to Information Act, 2005 to Respondent No. 1/PIO 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 13.10.2011. PIO/Respondent No. 1 shall appear for hearing.

Further inquiry posted on 13.10.2011 at 10:30a.m.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 24th day of August, 2011.

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

