

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 40/SCIC/2011

Shri Rony Dias,
Murida, H. No. 2,
Cuncolim,
Salcete - Goa

.... Appellant

V/s.

- 1) First Appellate Authority,
Directorate of Municipal Administration,
Collectorate Building, Panaji - Goa Respondent No. 1.
- 2) Public Information Officer,
Cuncolim Municipal Council,
Cuncolim, Salcete - Goa Respondent No. 2.

Appellant in person.

Respondent No. 2 in person.

J U D G M E N T **(22.08.2011)**

1. The Appellant, Shri Rony Dias, has filed the present Appeal praying that the requested information be provided free of cost; that total cost of the information provided be recovered from the Public Information Officer; that Public Information Officer be penalized under section 20(1); that disciplinary action be initiated against the Public Information Officer under section 20(2) of the Right to Information Act, 2005 and that the Appellant be compensated for causing mental agony, tension, inconvenience, etc., and other reliefs as mentioned in the Memo of Appeal.

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

That the Appellant, vide an application dated 06.09.2010, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (PIO)/Respondent No. 1. However till date he has not received any information nor has the PIO informed him about the information being read as under section 7(3) (a) of the RTI Act. Being aggrieved the Appellant preferred the Appeal before the First Appellate Authority. By order dated 07.12.2010 the Appeal was allowed and

the PIO was ordered to trace the file, search for alternate source of records and make the information available within one month and that too without charging any fees as per section 7(6) of the R.T.I. Act. That inspite of the order of FAA the PIO has denied him the information. Hence the present Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondent No. 1 has filed the reply. According to him his office have made maximum efforts to trace the file however the file is not traceable with his office and that information with respect to the same will be submitted if found subsequently.

The Respondent No. 2 in his reply states about the Appeal filed, its progress and order passed.

4. Heard both sides and perused the records.

It is seen that by application dated 06.09.2010 the Appellant sought certain information from the Respondent No. 1. The same was not replied and/or information was not furnished. Hence, the Appellant preferred the First Appeal which was decided in Appellant's favour, however, no information was furnished. According to the Respondent No. 1 the information/file is not traceable in their office.

5. The file appears to be of recent origin however, the same is not traceable. Normally bodies like Municipal Council, etc., are custodians of public documents. If the contention that file is not traceable is accepted 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.

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/document that is not available cannot be furnished. The Right to Information can be invoked only for access to permissible information.

6. Appellant contends that proper inquiry be held and he relied on the judgment of this Commission in Appeal No. 150/2007 dated 26.06.2008. I have gone through the same.

I do agree with the Appellant. In my view the higher Authorities should hold proper inquiry and bring to book the delinquent officer/official.

7. The Respondent No. 1 should bear in mind that R.T.I. applications are to be promptly replied and carefully handled. Incidentally the Appellant does not press for anything. However, the Respondent No. 1 in future should maintain time schedule, etc.

8. In view of the above, I am of the opinion that Director of Municipal Administration should conduct inquiry. This Commission hereby requests the Director of Municipal Administration to conduct an inquiry. Hence, I pass the following Order:-

ORDER

The Appeal is partly allowed. The Director of Municipal Administration to conduct an inquiry regarding the said file/information and fix responsibility for missing/misplacement of the said file/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 be completed as early as possible preferably within 3 months and report compliance.

Copy of the Order be sent to Director of Municipal Administration, Panaji-Goa.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 22nd day of August, 2011.

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

