

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Complaint No. 548/SCIC/2010

Mr. Vinayak G. Dessai,
H. No. 108, Manlantad,
Sankhalim – Goa

...Complainant

V/s

Mr. Bhanudas V. Naik,
Public Information Officer,
Sankhalim Municipal Council,
Sankhalim – Goa

... Opponent

Adv. Ms. S. R. Gauns for the Complainant.

Adv. Shri A. Ghatwal for the Opponent.

ORDER
(29/08/2011)

1. The Complainant, Shri Vinayak G. Dessai, has filed the present Complaint praying that Complaint be allowed and Opponent be directed to furnish correct information sought by the Complainant vide application dated 04.05.2010; that penalty of Rs. 250/- be imposed on the Respondent from the date of reply dated 02.06.2010 till the date of furnishing information and that disciplinary action against the Respondent under Service Rules be initiated.

2. It is the case of the Complainant that he filed an application dated 04.05.2010 seeking certain information under right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (PIO)/Opponent. That the Complainant sought information about the details of construction of the building. That the Respondent vide reply dated 02.06.2010 knowingly issued incorrect, incomplete and misleading information and also destroyed the information which was the subject of the request. Being aggrieved the Complainant has filed the present Complaint on the various grounds as set out in the Complaint.

3. The case of the Opponent is fully set out in the reply which is on record. In short, it is the case of the complainant that the Complaint is bad in law, non-maintainable and that there is no cause of whatsoever nature for

the Complainant to go before the Commission with the present Complaint and on this ground alone the Complaint deserves to be dismissed. That the Complainant had filed an application for carrying out necessary inspection way back in the month of May 2010 and accordingly the entire records which were in custody of the Opponent came to be made available to the Complainant and in that regard the Complainant had made necessary endorsement in the said application dated 26.05.2010. The Opponent denies that false, incorrect, incomplete and misleading information was given. The Opponent also denies that the information was destroyed. That whatever information as available was furnished by reply dated 02.06.2010. The Opponent also refers to the correspondence which Smt. Surekha S. Salunke, the partner of Rudreshwar Builder & Real Estate Developer to make available the copies of the documents. However, the said builders did not furnish the information and/or documents sought from them by the Opponent. That the complaint is devoid of substance. That whatever available information has been furnished. The Opponent denies the case of the Complainant as set out in the Complaint. According to the Opponent the Complaint is liable to be dismissed.

4. Heard Adv. Ms. S. R. Gawas and Adv. Shri A. Ghatwal. Advocate for the Complainant also refers to the facts of the case and also submits written arguments which are on record. During the course of his arguments Adv. Shri Ghatwal admitted that the said documents are not available and whatever available is furnished.

5. Heard the arguments. The learned Adv. Ms. S. Gauns argued on behalf of the Complainant and the learned Adv. Shri A. Ghatwal argued on behalf of the Opponent.

According to the Adv. for Complainant the Opponent has not furnished the information. The same was not furnished even after Order of F.A.A. According to her what is furnished is incomplete and misleading. Advocate for Complainant also filed the written arguments which are on record.

During the course of his arguments Advocate for the Opponent submitted that the information which was available on record was furnished. Some information is not available and as such could not be furnished.

6. 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 relief prayed is to be granted or not?

It is seen that by application dated 04.05.2010 the Complainant sought certain information. The information consisted of 21 points i.e. Sr. No. 1 to 21. The information sought was in connection with construction of some building. By reply dated 02.06.2010 the Opponent furnished the information. However information in respect of point No. 1, 6, 10, 11, 12, 13, 14, 16 and 17 could not be furnished as the same was not available in the file. Being not satisfied the Complainant preferred an appeal before the First Appellate Authority. The F.A.A. passed the Order on 16.08.2010 and observed as under:-

“

The Respondent has not submitted information/documents to the issues 1, 6, 9, 10, 11, 12, 13 and 19. The Appellant shall make all the visible efforts to trace the records and make it available to the Appellant within a period of 15 days from the date of order i.e. 16.08.2010 without charging fees.”

It appears that Opponent even wrote letters to Surekha S. Salunke asking about the said documents, however, the same were not available. Only N.O.C. for electricity connection was furnished. It is also seen from the records that the Complainant has taken inspection of the file/records.

According to the Advocate for the Complainant incomplete, incorrect and misleading information was furnished. Whereas according to the Advocate for Opponent the available information is furnished and the same is correct.

7. It appears that the said documents/information is not available in the office of the Opponent. From the reply it is seen that some documents are not available. If the contention that information cannot be furnished as the same is not traceable then it would be impossible to complete 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 also 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 Act can be invoked only for access to permissible information.

8. Now it is to be seen whether there is delay in furnishing the information. The application is dated 04.05.2010 and the reply is furnished on 02.06.2010. The reply is in time. There is no delay as such.

9. In view of all the above, available information is furnished hence, no intervention of this Commission is required. Hence, I pass the following Order:-

ORDER

No intervention of this Commission is required as available information is furnished. The Complaint is disposed off.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 29th day of August, 2011.

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

