

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 92/SCIC/2011

Domnic C. Fernandes,
B.I.T., Block No. 1/215, IInd Floor,
Love Lane, Mazagaon,
Mumbai - 400 010 Appellant

V/s.

1) Public Information Officer,
Office of the Camara Municipal Council,
Town Hall, Bardez,
Mapusa, Bardez - Goa Respondent No. 1.

2) Shri Daulat Hawaldar,
First Appellate Authority,
Director of Municipal Administration/
Urban Development,
Panaji - Goa Respondent No. 2.

Appellant in person.

Adv. Shri Sankalp Sardessai for Respondent No. 1.

J U D G M E N T
(12.09.2011)

1. The Appellant, Shri Domnic C. Fernandes, has filed the present appeal praying that the information as sought by him be furnished.

2. The gist of the Appellant's case is as under:-

That vide application dated 28.06.2011 he 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 on 22.07.2010 and 13.09.2010 he filed two more applications whereby he sought certain information. It is the case of the Appellant that the information sought by him was denied to him as per the reply of the Respondent dated 14.07.2010, 12.08.2010 and 16.12.2010. It is seen from record that being aggrieved the Appellant filed an Appeal before the First Appellate Authority (FAA)/Respondent No. 2. By Order dated 12.11.2010 the Respondent No. 2 directed the Respondent No. 1 to make visible

efforts to find out the records from all the possible alternate sources and make the information available within one month from the date of Order, i.e. 12.11.2010 without charging fees. Since information was not furnished being aggrieved the Appellant has filed the present Appeal.

3. The Respondents resist the Appeal and the reply of Respondent No. 1 is on record. It is the case of Respondent No. 1 that the application dated 28.06.2010 of the Appellant was duly replied by letter dated 14.07.2010 wherein it was informed to the Appellant that the information sought by him is very old, i.e. beyond 20 years and the same was not traceable despite their best efforts. That being aggrieved with the said order the Appellant approached the FAA/Respondent No. 2 and the FAA passed the order directing the Respondent No. 1 to make visible efforts to find out the records, etc. That vide letter dated 16.12.2010 it was informed to the appellant that the Council has given a visit to the house of Atmaram Savlo Bicholkar and found that he has expired and that his family members have not given any information regarding the matter. It is further the case of Respondent No. 1 that the information sought by the Appellant is very old i.e. of 05th April, 1968. That at the relevant time Tivim was under the jurisdiction of Municipal Council and at the relevant time it was known as Camara Municipal Bardez. That thereafter the said Municipality was limited to Mapusa city limits and Tivim now no longer falls within the jurisdiction of Council. That as per the directions of the Director of Municipal Administration, the Council even went to the house of the said person to whom the licence was issued to get any additional information but as mentioned above he has expired and his family members do not have any documents. That all efforts have been made by the PIO to provide information to the Appellant but the same have proved futile. According to the Respondent the Appeal is to be dismissed.

4. Heard the Appellant as well as the Ld. Adv. Shri Sankalp Sardesai for Respondent No. 1. According to the Respondent the records are not available.

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 relief prayed is to be granted or not?

It is seen that by application dated 28.06.2010 the Appellant sought certain information. By reply dated 14.07.2010 the PIO/Respondent No. 1 informed that the information sought by him is very old, i.e. beyond 20 years and the same are not traceable, despite their best efforts. It is seen that again by application dated 22.07.2010 sought certain information. By reply dated 12.08.2010 the PIO/Respondent No. 1 informed that information sought is very old beyond 20 years and the same is not traceable. It appears that the Appellant preferred an appeal before the First Appellate Authority/Respondent No.2. By Order dated 12.11.2010 the F.A.A./Respondent No. 2 observed as under:-

“
..... The Respondent shall make visible efforts to find out the records from all the possible alternate sources and make the information available within one month from the date of order, i.e. 12.11.2010 without charging fees.”

By order dated 16.12.2010 Chief Officer informed that with reference to the Order of D.M.A. the Council has given visit at Tivim to the house of Shri Atmaram Salvo Bicholkar and found that Shri Atmaram Salvo Bicholkar has been expired and his family member has not given any information regarding the matter.

In short the information is not available with the Public Authority being old, that is of the year 1968. It is also stated by Respondent No. 1 in his reply that at the relevant time Thivim was under the jurisdiction of Municipal Council known as Camara

Municipal de Bardez and that Thivim now no longer falls within the jurisdiction of present Council.

6. No doubt the information sought is that of recent origin, however, the same is not traceable. If the contention that information cannot be furnished as the information is not traceable is accepted then it would be impossible to implement R.T.I. Act. However, it is also a fact that information that is not available cannot be supplied. No doubt records are to be well maintained. In any case the information sought is not traceable, no obligation on the part of PIO to disclose the same as the same cannot be furnished.

I have perused some of the rulings of the Central Information Commission.

(i) In Shri B. S. Rajput *v/s.* Council of Scientific & Industrial Research (CSIR) (F.No.CIC/AT/A2008/00464 dated 15.09.2008) where Respondent pointed out that all information barring one information (corresponding to Appellant's RTI request dated 13.06.2007) had been provided, the Commission held that it has no reason to disbelieve the categorical assertion of Respondent and the document in question missing is more than 20 years old. Thus document being untraceable cannot be physically disclosed and resultantly there is no disclosure obligation on the Respondent.

(ii) In Shri V.P. Goel *v/s.* Income Tax Department (F. No.CIC/AT/A/2008/00455 dated 10.09.2008) where the Appellate Authority held that since the information requested is not maintained by the officers of Public Authority in regular course of business it did not qualify to be an information 'held by the public Authority in terms of section 2(j) of the R.T.I. Act. The Commission observed that it is not possible to overrule the order of Appellate Authority who has very correctly decided that information which is not maintained or held by the Public Authority cannot be disclosed.

The rule of law now crystallized by the various rulings of C.I.C. is that information/document that is not available cannot be supplied. The Right to Information Act can be invoked only for access to permissible information.

7. Regarding aspect of delay. The reply/replies are furnished in time. So there is no question of delay as such.

8. In view of all the above since the information is not traceable the same cannot be furnished. Hence, I pass the following Order:-

ORDER

Since information is not traceable the same cannot be disclosed. The appeal is disposed off.

Appeal is accordingly disposed off.

Pronounced in the Commission on this 12th day of September, 2011.

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

