

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 58/SCIC/2011

Bellarmin P. Fernandes,
F/2, Mar-Bel Apartments,
Murida, Fatorda,
Margao - Goa - 403 602

.... Appellant

V/s.

1) State Public Information Officer,
Executive Engineer,
W.D. VI, Roads (S), P.W.D.,
Fatorda,
Margao - Goa

.... Respondent

Appellant alongwith his representative Shri U. Naik.
Respondent No. 1 alongwith Adv. Shri A. Talaulikar for Respondent No. 1.

J U D G M E N T
(20.09.2011)

1. The Appellant, Shri Belarmin P. Fernandes, has filed the present Appeal praying that records and proceedings of First Appeal No. 195/2011 be called for and that penalty be imposed on Respondent No. 1 as required under the Act for not furnishing the information within the stipulated period laid down under the Act.

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

That the Appellant filed an Appeal before the Respondent No. 2 as Respondent No. 1 did not furnish the relevant information as sought for under the Right to Information Act, 2005 within stipulated period as laid down in the Act. That upon hearing both the parties the First Appellate Authority was of the opinion that the information sought for was not available with the Respondent. That the Appellant had sought information with the Respondent by his application dated 08.11.2010. The reply of the Respondent was received by the Appellant on 11.12.2010 and thereafter the information given by the Appellant to the Respondent is beyond the limitation period under the RTI Act. However, the FAA failed to take into consideration that the Respondent had not furnished the information in time and dismissed the Appeal. Being aggrieved by the said Order the

Appellant has preferred the present Appeal on various grounds as set out in the Appeal.

3. The Respondent resists the Appeal and the reply of the Respondent No.1 is on record. It is the case of Respondent No. 1 that the Appeal is barred by the law of limitation i.e. the same was filed after the lapse of about 39 days. On merits it is the case of the Respondent No. 1 that letter informing the Appellant about non-availability of information sought by him was sent to him on 02.12.2010 which was well within the time prescribed in the RTI Act. It is the case of the Respondent No.1 that the information sought by the Appellant was not available in the office of PIO/Respondent No. 1 and thereafter the Appellant was informed vide letter dated 02.12.2010. That the prayers in the Appeal are not sustainable in law and therefore needs to be rejected outright. Besides, the Appeal is time barred and hit by period of limitation. It is further the case of Respondent No. 1 that the concerned file containing relevant information was lost and found missing. Respondent No. 1 made valiant efforts to trace the same however, the same could not be traced. That FIR has been lodged with the Margao Police Station on 17.01.2011 regarding the missing of the said file which contained the information sought by the Appellant. In short, according to the Respondent the Appeal is liable to be dismissed.

4. Heard Shri U. Naik, representative of the Appellant and Adv. Shri A. Talaulikar for Respondent No. 1 and perused the records. It is seen that by application dated 08.11.2010 the Appellant sought certain information. By letter dated 02.12.2010 the Respondent No. 1 furnished the reply stating that information is not available. Considering the date of application and of the reply, the reply was sent well in time. Being aggrieved the Appellant preferred Appeal before the First Appellate Authority/Respondent No. 2. By Order dated 07.02.2011 Appeal was dismissed on the ground that documents were not available. In short information is not available with Public Authority. It is also seen from the record that Respondent No. 1 has also lodged a police complaint on account of the same.

5. No doubt information appears to be of recent origin. However, the same is not available. If the contention that information cannot be

furnished as the same is not available 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.

6. Regarding delay the reply was furnished on 02.12.2010. The reply is in time. Of course it was received by the Appellant on 11.12.2010 from the postal authorities. Even otherwise there is no considerable delay as such and, therefore, the same is to be overlooked.

7. It was contended by the Advocate for Respondent No. 1 that the Appeal is time barred. According to him the same is filed beyond 39 days. It is seen that Appeal is within time considering the fact that the Second Appeal is to be preferred within 90 days in terms of section 19(3) of the RTI Act. Hence, the Appeal is within time.

8. In view of all the above, since information is not available the same cannot be furnished. The only thing required is follow-up action by the Public Authority in respect of the Complaint filed. Advocate for Respondent No. 1 states that they will follow-up the matter. Hence, I pass the following Order:-

ORDER

Since information is not available, the same cannot be furnished.
The Appeal is disposed off.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 20th day of September, 2011.

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

