

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Complaint No. 13/SCIC/2011

Mr. Ajit S. Porob,
"SHASHI SADAN",
Palmarwado-Pomburpa,
Bardez - Goa

...Complainant

V/s

Public Information Officer &
Mamlatdar of Bardez,
Bardez taluka,
Mapusa - Goa

... Opponent.

Complainant in person.

Opponent in person.

ORDER

(14.11.2011)

1. The Complainant, Shri Ajit S. Porob, has filed the present Complaint praying that the records and proceedings before the Opponent be called for; that the Opponent be directed to furnish the information sought by this Complainant in accordance with his application dated 08.12.2010 which should be free of charge in terms of Section 7(6) since Opponent has failed to provide information within the stipulated period; that disciplinary proceedings be initiated and that penalty be imposed.

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

That the Complainant, vide application dated 08.12.2010, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (P.I.O.)/Opponent. That the Opponent till date has not furnished any information nor has bothered to intimate to the Complainant about the status of his application thereby violating Section 7(6) of R.T.I. Act. That the Opponent failed to exercise jurisdiction and perform his duties, which is so vested, in him thereby acting in an arbitrary manner by not entertaining the application of this Complainant in an irresponsible manner and has illegally withheld the

information sought by the Complainant. Hence, the present Complaint praying for the above mentioned relief.

3. The Opponent resists the Complaint and the reply of the Opponent is on record. It is the case of the Opponent that the Complainant vide letter dated 10.12.2010 has sought the information in respect of point No. 1 to 7 regarding the Comunidade of Olaulim and Pomburpa and the Opponent vide letter dated 31.12.2010 informed the Complainant that the information sought by him is not available in their office. That no First Appeal is preferred instead the present Complaint is filed. It is further the case of the Opponent that P.I.O. has to furnish the information which is readily held by him and that he cannot create the same. That the allegations made by the Complainant are false.

4. It is seen that initially Shri Rupesh Porob, the representative of the Complainant remained present. However, from 06.07.2011 till today complainant and his representative were absent. Representative of the Opponent is present. In any case I am proceeding on the basis of record.

5. I have carefully gone through the records of the case and also considered the pleadings of the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is seen that Complainant sought certain information by letter dated 08.12.2010. According to the Complainant no reply is furnished, hence the complaint. However, this is disputed by the Opponent. According to the Opponent, reply bearing No. MAM/BAR/RTI/1036/2010/3201 dated 31.12.2010 was sent to the Complainant informing that the information sought by him is not available in this office. This reply was sent in time.

In short the information sought is not available with the Public Authority/Opponent.

6. No doubt information sought is not available. If the contention that information cannot be furnished as the same is not available/traceable is accepted then it would be impossible to implement the 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 the information sought is not traceable, no obligation on the part of P.I.O. to disclose the same.

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. Apart from the above, the present Complaint is not maintainable. The Complainant ought to have filed First Appeal. In the factual backdrop of this case Complainant could not file Complaint directly to the Commission. The Complainant to take note of the same in future.

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

ORDER

No intervention of this Commission is required as information is not available. The Complaint is disposed off.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 14th day of November, 2011.

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

