

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No.110/SIC/2011

Mr. Benigno Afonso,
R/o. H. No. 361, Bairo-Foro,
Santo Estevem,
Ilhas – Goa

... Complainant.

V/s.

Public Information Officer,
Dy. Director of Panchayats,
North Goa,
Panaji –Goa.

.....Opponent.

Complainant in person.
Opponent absent.

ORDER
(02-12-2011)

1. The Complainant, Shri Benigno Afonso, has filed the present Complaint praying that Commission may kindly inquire into this Complaint and necessary process of law under R.T.I. Act against P.I.O. may kindly be issued and that P.I.O. may kindly be ordered to furnish the information sought by the Complainant.

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

That the Complainant, vide his application dated 25.04.2011 had 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 vide his letter dated 30.05.2011 informed the Complainant that the said file is not traceable in the records of the Directorate of the Panchayats. That the said reply is not given within the time limit specified under the Act. That the Opponent has given misleading or false reply

under this Act. That the Opponent has intentionally and deliberately furnished false reply to the Complainant in as much as the Complainant has filed complaint dated 23.02.2011 regarding illegal construction of bungalow by Mr. Estevam Manual Menezes to the dy. Director of Panchayats (North) who is also the P.I.O./Opponent herein and despite repeated request, the Dy. Director is reluctant to take necessary action against the said illegal construction. It is the case of the Complainant that the P.I.O./Opponent without any reasonable cause always delayed and persistently failed to provide information within the time specified under R.T.I. Act and malafidely and knowingly giving incorrect, incomplete and misleading information to the Complainant. Being aggrieved the Complainant has filed the present Complaint.

3. Notice was issued to the Opponent, however, he remained absent. Various opportunities were given to the Opponent however he did not remain present. Hence, I am proceeding on the basis of record.

4. Heard the arguments of the Complainant and perused the records.

It is seen that by application dated 25.04.2011 the Complainant sought certain information i.e. Xerox certified copies of the entire records and proceedings of the Appeal No. 37/1997. By reply dated 30.05.2011 the Dy. Director of Panchayats/P.I.O. informed the Complainant that the said file is not traceable in the records of their office.

In short the information is not available with the Public Authority.

5. No doubt the information sought is of the year 1997 i.e. the file is of the year 1997, however, the same is not traceable. If the contention that information cannot be furnished as the same 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 as it did not qualify to be an information 'held' by Public Authority in terms of Section 2(j) of the R.T.I. Act.

No doubt records are to be well maintained so as to facilitate Right to Information. In any case information which is not available cannot be disclosed.

The rule of law now crystallized by the various rulings of the 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. According to the Complainant file should be there. In any case the complainant can seek inspection and Opponent P.I.O. to give the inspection of the concerned records.

In my view higher authorities to hold proper inquiry regarding the said file and bring to book the delinquent officer/official.

7. The Complainant contends about delay. Considering the application and reply there is about 4 days delay. In any case in the factual backdrop of this case the same is to be condoned. However, P.I.O. should maintain time schedule in future.

8. Regarding maintainability of Complaint. In the facts of this case the Complainant ought to have filed the First Appeal. Complaint lies only if it comes within Section 1(a) to (f) of Section 18. In any case Complainant to take note of the same in future.

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

ORDER

The Complaint is partly allowed. The Opponent to give the inspection of concerned record/files to the Complainant on a mutually agreed date but within 15 days from the receipt of this Order.

The Director of Panchayat or any officer appointed by him to conduct an inquiry regarding the said complaint and to fix responsibility for misplacement/missing 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 to be completed as early as possible preferably within 3 months.

A copy of the order be sent to the Director of Panchayats.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 02nd day of December, 2011.

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

