

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.176/SIC/2010

Adv. N. B. Chodankar,
R/o.55(A), Small Guirim,,
Vancio Vaddo, Bardez-Goa ... Appellant.

V/s.

1. The Public Information Officer
Shri G. J. Sankhvalkar,
Mamlatdar of Bardez
Mapusa, Bardez, Goa
2. The First Appellate Authority
Shri Dasharath Redkar,
Dy. Collector & S.D.M.,
Mapusa, Bardez-Goa ... Respondents

Appellant present
Respondent No.1 present.
Respondent No.2 absent.

J U D G M E N T
(16/01/2012)

1. The Applicant, Adv. N. B. Chodankar, has filed the present appeal praying that the appeal be allowed and necessary penalty be imposed on the P.I.O. for not providing the information within the prescribed time limits of 30 days.

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

That the appellant, vide his application dated 1/2/2010, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer(P.I.O.)/respondent No.1. That by letter dated 8/3/2010 the respondent No.1 requested the appellant to collect the

information, however, the said letter does not whisper about examination of files before issuing the certified copies. That this letter itself is communicated by ordinary post six days after completion of normal period of 30 days. That the appellant received the said letter on 15/3/2010. That there is clear delay of 12 days and that too information sought is not complete information and hence the appellant did not accept the incomplete information because the incomplete information would not serve his purpose. Being not satisfied the appellant preferred the appeal before the First Appellate Authority(F.A.A.)/Respondent No.2. That the F.A.A. passed the order dated 17/5/2010. Being aggrieved by the said order the appellant has preferred the present appeal.

3. The respondent No.1 resists the appeal and the reply is on record. In short it is the case of the respondent No.1 that the appellant has filed application dated 1/2/2010 seeking information on the expenditure incurred on the parliamentary election in Bardez Taluka. The respondent No.1 vide letter dated 3/3/2010 informed the appellant that the information sought by him is ready and he may collect the same on any working day during working hours. That accordingly the appellant collected the information from the office. That the appellant subsequently preferred the First Appeal which was dismissed by 1st Appellate Authority by order dated 17/5/2010. The respondent No.1 denies the case of the appellant as set out in the Memo of Appeal. That the appeal preferred by the appellant is bad in law as the appellant has been issued all the information which was held by the P.I.O. sought by him under the R.T.I. Act. That the reply has been issued on 3/3/2010 exactly within the period specified by the R.T.I. Act, however, due to the administrative difficulties the letter was posted on 8/3/2010, which has been received by the appellant; who has collected the information from this

office without any protest. According to the respondent No.1 it is not the case of the appellant that incomplete or incorrect information has been issued to him, neither it is claimed that the information has been denied or delayed deliberately or maliciously, hence there is no cause of action for filing the present appeal. That the appeal is frivolous and without merits and liable to be dismissed.

4. Respondent No.1 has filed another reply/application dated 13/7/2011 which is on record. According to respondent No.1 the First Appeal preferred by the appellant has been dismissed by the F.A.A. on the submission of the appellant that he has received the information, however, the appellant has contended that he has not received the information till date. That the information sought by the appellant was incurred during the Lok Sabha Election 2009, and all the bills, vouchers and other related documents of the expenditure incurred was submitted to the Directorate of Accounts. That the Directorate of Accounts after verifying the bills had settled the same and has forwarded to this office the letters towards settlement of bills

Reply of the appellant/written arguments on reply dated 15/11/2010 and 31/12/2010 as well as reply on the application dated 13/7/2010 are on record.

5. The respondent No.2 has also filed the reply which is on record. It is the case of the respondent No.2 that the arguments were heard during the hearing of the appeal and the appellant admitted that the required information was received by him, but after the period of expiry of 30 days and hence the penalty be imposed on the respondent No.1 for non-providing the information within the period of 30 days as provided under the Act. That since the appellant has received

the information the respondent No.2 did direct respondent No.1 to provide the information free of cost to the appellant as provided under the law. Respondent No.2 denies the contents of para 6 of the Memo of Appeal. According to him appeal is liable to be dismissed.

6. Heard the arguments of appellant and respondents. Their written arguments also are on record.

The appellant narrated in detail the facts of the case. According to him application is dated 1/2/2010. That letter dated 8/3/2010 was posted on 12/3/2010 and received on 15/3/2010. He also submitted that information not given. He also referred to the appeal before F.A.A. He next submitted that till to-day he has not received the documents. He submitted that there is clear delay of 12 days.

According to respondent No.1 reply in fact is dated 3/3/2010 and in the First Appeal appellant has admitted of having received the information. Inspection could not be given as file contains bills and bills were sent to account department. Respondent No.1 submitted that appellant failed to prove that information has been denied or delayed due to malafide intention and delay is deliberate.

During the course of his arguments, respondent No.2 submitted that appeal is not maintainable and besides appellant has admitted that he has received the information. He next submitted that being First Appellate Authority he has no power to impose penalty. According to the respondents appeal is liable to be dismissed.

In reply appellant submitted that disciplinary action is to be taken and that the officer is to be penalized.

7. 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 1/2/2010 the appellant sought certain information. This application was received on the same day i.e. 1/2/2010. By letter dated 8/3/2010 the P.I.O. informed the appellant to collect the information on payment of necessary fees. The information that was received is not on record. However the appellant preferred an appeal before the First Appellate Authority. In the memo of Appeal the appellant mentions about incomplete information and about delay. By order dated 17/5/2010 the appeal was dismissed. However, F.A.A. observes:-“The appellant has received the information and hence this Court cannot direct the respondent/P.I.O. to issue the same information free of cost to the appellant as provided under the law.”

The only grievance of the appellant is that he has been furnished with the information, however, the same is incomplete and misleading. And secondly there is delay in furnishing the same.

8. First I shall refer to the aspect of delay. According to the appellant there is delay of about 12 days. This is disputed by the respondent No.1 According to him letter was posted on 3/3/2010. In any case it was kept ready on that day. In any case to my mind the Public Information Officer should be given an opportunity to explain about the same in the factual matrix of this case.

9. The appellant contends that the information is incomplete and misleading. This is disputed by respondent No.1. According to respondent No.1 information furnished is correct and whatever available was furnished.

It is to be noted here that the purpose of the R.T.I. Act is per se to furnish information. Of course the appellant has a right to establish that information furnished to him is false, incorrect, incomplete, misleading etc; but the appellant has to prove it to counter opponent's claim. The information seeker must feel that he got the true and correct information otherwise the purpose of R.T.I. Act would be defeated. It is pertinent to note that mandate of R.T.I. Act is to provide information - information correct to the core and it is for the appellant to establish that what he has received is incorrect and incomplete. The approach of the Commission is to attenuate the area of secrecy as much as possible. With this view in mind, I am of the opinion that the appellant must be given an opportunity to substantiate that the information given to him is incomplete, incorrect, misleading etc as provided in Sec.18(1)(e) of the R.T.I. Act.

10. In view of the above, the respondent No.1 is to be heard on the aspect of delay. The appellant should be given an opportunity to prove that the information is incomplete, incorrect, misleading etc. Hence I pass the following order :-

ORDER

The appeal is allowed. Issue notice U/s. 20(1) of Right to Information Act, 2005 to the respondent No.1/P.I.O. to show cause why penalty action should not be taken against him for causing delay in furnishing information. The explanation, if any, should reach the Commission on or before **21/02/2012**.

The Public Information Officer(Respondent No.1) shall appear for hearing.

The appellant to prove that information furnished is false, incorrect misleading etc.

Further inquiry posted on **21/02/2012 at 10.30 a.m.**

The appeal is accordingly disposed off.

Pronounced in the Commission on this 16th day of January, 2012.

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