

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Complaint No. 132/SCIC/2011

Jacinto Sequeira,
Bonglo-de-Jacinto,
Tivim-Auchit Vaddo,
Bardez - Goa

... Complainant.

V/s

Public Information Officer,
Administrator of Comunidade,
North Zone,
Mapusa – Goa

... Opponent.

Complainant in person.
Adv. K. H. Bhosale for Opponent.

O R D E R

(13.02.2012)

1. The Complainant, Shri Jacinto Sequeira, has filed the present Complaint praying that the Public Information Officer be directed to submit the required information immediately; that penalty be imposed on the Opponent and that the Complainant be compensated.

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

That the Complainant, vide application dated 02.05.2011 and 17.05.2011 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (PIO)/Opponent. That the Opponent did not furnish the information within specified time period and hence the Complainant preferred the Appeal before the First Appellate Authority (FAA). That vide Order dated 27.07.2011 the FAA directed the PIO to dispose off the application dated 02.05.2011 and 17.05.2011 within 15 days from 27.07.2011. That the PIO has failed to comply with the Order of the FAA till date. Being aggrieved the Appellant has preferred the present Complaint on the grounds as set out in the Complaint.

3. The Opponent resists the complaint and the written submissions of the Opponent are on record. It is the case of the Opponent that the application was received on 02.05.2011 from the Complainant seeking information pertaining to Survey No. 343/14 of Thivim Comunidade land. And whereas the second application was received on 17.05.2011 alongwith the list of Matricula-dos-Joneiros-da-Comunidade of Tivim seeking information of the places of births and domicile w.e.f. 20.12.1961 alongwith certified copies through proper channel and covering letter. That the said information was totally related to Comunidade of Tivim and as such sought the assistance of Escrivao/Registrar of Comunidade of Tivim in providing the information in good faith. That the Complainant was pleased to file the Appeal on 23.06.2011 before FAA, however PIO did not receive any information from Comunidade of Tivim. As such could not provide the same although FAA passed an order on 27.07.2011 directing the PIO to dispose off applications dated 02.05.2011 and 17.05.2011 within 15 days. That the PIO/Opponent informed the Complainant to make it crystal clear that office is not having information sought by the Appellant and hence it was sought from Comunidade of Tivim vide letter dated 03.05.2011. That then reminder was issued dated 20.06.2011 with regard to the said application. That as no information has been received from Comunidade of Tivim even after repeated reminders memorandum dated 11.07.2011 was issued and only thereafter the Opponent received two replies from the Attorney of Comunidade stating that the said information is not available with them and that the office of the Comunidade of Tivim does not come under RTI Act. It is further the case of the Opponent that the Opponent has made sufficient efforts to seek required information from the Comunidade of Tivim to provide in good faith to the applicant/Complainant. That the PIO/Opponent comes under Section 20(1) of the RTI Act, i.e. protection to action taken in good faith and hence the respective Complaint be dismissed.

4. Heard the Complainant as well as Learned Adv. Shri Bhosale for the Opponent.

The Complainant referred to the facts of the case in detail. According to him information was not furnished.

During the course of his arguments the Ld. Advocate for the Opponent submitted that Opponent made the efforts however, the information was not

available. He further submitted that it was also not available with the Comunidade of Tivim.

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 not in dispute that the Complainant filed two applications seeking information. It is also not in dispute that no information was furnished. Again it is not disputed that First Appeal was preferred and the Order was passed. According to the Complainant information was not furnished whereas according to Advocate for Opponent the Complainant was informed that information is not available with the Opponent and that the application was sent to the Attorney/Escrivao of the Comunidade of Tivim. That the said Escrivao only on 11.07.2011 sent the reply stating that the information was not available and that office of Comunidade of Tivim does not come under RTI Act. In any case it was informed that information is not available. It is seen from record that the Opponent on his part informed the Complainant that their office is not having the information sought by the Complainant.

6. In short information is not available with the Public Authority/Opponent. Under RTI Act the information that is not available cannot be furnished and consequently there is no obligation on the part of the PIO to disclose the same as the same did not qualify to be as information 'held' by the Public Authority in terms of Section 2(j) of the RTI Act.

I have perused some of the rulings of Central Information Commission on the point. The rule of law now crystallized by the various rulings of CIC is that information/document that is not available cannot be furnished. RTI Act can be invoked only for access to permissible information.

7. Regarding the aspect of delay. I have perused the replies which are on record. No doubt there is some delay on the part of Escrivao/Attorney. However, he is not a party before this Commission and, moreover, he contends that RTI Act is not applicable to him. In any case since information is not available it would not be prudent to delve further in the matter.

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

ORDER

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

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 13th day of February, 2012.

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