

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.177/SIC/2011

Shri Joseph Carneiro,
Plot # 51, Journalist Colony,
Alto Betim, Porvorim,
Bardez, Goa

... Appellant.

V/s.

1. The Public Information Officer,
V.P. Secretary,
Village Panchayat of Marna Siolim,
Bardez - Goa

2. S. S. Naik,
First Appellate Authority,
Block Development Officer (I), Bardez
Mapusa, Bardez, Goa

... Respondents

Appellant present.

Respondent No.1 present

Respondent No.2 absent.

J U D G M E N T
(21/06/2012)

1. The Appellant, Shri Joseph Carneiro, has filed the present appeal praying that the concerned First Appellate Authority as well as the Public Information Officer be directed to immediately make available the information sought (point No.3 and 4) by him as per his R.T.I. application and that the glaring violation by the said P.I.O. has resulted in grave inconvenience and delay, thereby, attracting sub-section (1) of Section 20 which this Commission may consider deemed fit and proper in the light of the facts and circumstances of the present appeal.

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

That the appellant, vide his application dated 27/5/2011, 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 the P.I.O. furnished information vide letter dated 25/6/2011 pertaining to point No.1 of his application. Since incomplete information was furnished the appellant preferred the appeal before the First Appellate Authority(F.A.A.)/respondent No.2. That the respondent No.2 ordered the P.I.O. to file proper reply along with documents within 7 days. That the P.I.O. furnished information as not available. Being aggrieved the appellant has preferred the present appeal on the grounds as set out in the memo of Appeal.

3. The respondents No.1 resists the appeal and the reply is on record. In short it is the case of the respondent No.1 that the Respondent No.1 has already furnished the information to the appellant. According to respondent No.1, the appeal is liable to be dismissed.

4. The reply of the appellant to the reply of respondent No.1 is on record.

5. Heard the appellant as well as respondent No.1.

6. 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 27/5/2011 the appellant sought certain information consisting of 4 points that is Sr. No.1 to 4. By reply dated 25/6/2011 the P.I.O./respondent No.1 informed the appellant that H. No.1091/9 is not shown in their office records nor it is registered in the Panchayat records. Being not satisfied the appellant preferred an appeal before the First Appellate Authority

(F.A.A.)/respondent No.2. The respondent No.2 by order dated 27/7/2011 observed as under :-

“The reply is not satisfying as it is not providing the reply to all the points. Therefore I hereby order the respondent to file a proper reply to the appellant along with documents, if any, within 7 days.”

The reply is furnished on 03/08/2011. As per the same the relevant information is not available.

7. This Commission gave inspection to the appellant in order to ascertain about the veracity of the statement made in the reply.

According to the respondent No.1/P.I.O. the information is not available.

8. In short the information is not available being old i.e. of the year 1967-68. 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 P.I.O. to disclose the same as the same cannot be furnished.

I have perused some of the rulings of the Central Information Commission on the point.

- (i) In Shri B. S. Rajput V/s. Council of Scientific & Industrial Research (CSIR) (F.No.CIC/AT/A 2008/00464 dated 15/09/2008) where respondent pointed out that all the information barring one information (corresponding to Appellant's 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 Appellant 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.

9. Regarding aspect of delay. The reply/replies are furnished in time. So there is no question of delay as such.

10. In view of all the above, since information is not traceable the same cannot be furnished. Hence I pass the following order :-

ORDER

Since information is not traceable the same cannot be disclosed. The appeal is disposed off.

The appeal is, accordingly, disposed off.

Pronounced in the Commission on this 21st day of June, 2012.

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