

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 239/SIC/2011

Mr. Jerry Braganza,
Near St. Jerome's Church,
Mapusa - Goa

.... Appellant.

V/s.

1) Public Information Officer,
Office of the Administrator,
Comunidade of North Zone,
Mapusa - Goa

.... Respondent No.1.

2) First Appellate Authority,
Office of the Collector (North),
Panaji - Goa

.... Respondent No. 2.

Appellant in person.

Adv. K. H. Bhosale for Respondent No. 1.

J U D G M E N T
(28.06.2012)

1. The Appellant, Shri Jerry Braganza, has filed the present Appeal praying to conduct an inquiry into the complaint of the Appellant as regards refusal on the part of P.I.O. to give the information sought; to conduct an inquiry into the representations made by the Clerk refusing to give the information sought and that penalties as provided under Section 20 of R.T.I. Act including fines and disciplinary action against the concerned Officers.

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

That the Appellant, vide an application dated 12.08.2011, 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 as there was no reply to the said application an appeal dated 15.09.2011 was filed before the First Appellate Authority at Panaji. That on the same day at around 11:30a.m. a letter was delivered from the P.I.O's office. That the reply shows that same is conveniently dated 09.09.2011, posted on 14.09.2011 and received on 15.09.2011, clearly late by four days. That the reply does not provide any information but on the contrary it has enclosed a

copy of the letter from the Clerk who claims that the minutes book is not in his charge till date. That the P.I.O. has not replied nor furnished the information sought. That the information sought is under the control of the Administrator who is also the P.I.O. It is the duty of the P.I.O. in the capacity as Administrator to conduct a thorough enquiry on the disappearance of the minutes book of the Comunidade by going backwards to the Clerks who held charge of the Comunidade affairs, at that point in time. That the public authority under Section 4 is required to maintain all its records duly catalogued and indexed. That the Code of Comunidades also provides that the Administrator has to maintain all the records in appropriate books provided for the purpose under Code of Comunidades. That the signatory to the reply from the P.I.O. dated 09.09.2011 is not the P.I.O. and has no authority to sign as P.I.O. and that the person is a non-entity. That likewise the Appellate Authority has not replied or ordered that the P.I.O. should furnish the information. That the request for information is, therefore, deemed to have been "refused" by both the P.I.O. and the Appellate Authority. Hence the present Complaint.

3. That the Respondents did not file any reply as such, however, Adv. K. H. Bhosale advanced arguments.

4. Heard the arguments of the Appellant and Adv. Shri Bhosale.

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 seen that vide application dated 12.08.2011 the Appellant sought certain information, that is, inspection of minutes register for the year 1991 to 1993 of the Comunidade of Mapusa. By letter dated 09.09.2011 the P.I.O./Respondent No. 1 informed the Appellant about action taken by their office and reply received by their office and forwarded the same to the Appellant. It was also informed that the Registrar of Comunidade of Mapusa states vide his letter dated 24.08.2011 that he made all efforts to trace the said register and gone through the records of Mapusa Comunidade and unable to trace the said register. In between on 15.09.2011 the Appellant preferred the Appeal before the First Appellate

Authority (F.A.A.). According to the Appellant F.A.A. did not reply nor ordered that P.I.O. should furnish the information.

Normally the F.A.A. must dispose the appeal within 30 days or by a extended period of 15 days but with reasons.

The only grievance of the Appellant is that no information is furnished.

6. According to P.I.O./Respondent No. 1 the said minutes Register is not traceable. The Registrar of Comunidade of Mapusa also states so. In short the information sought 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 if information is not available the same cannot be furnished. It is to be noted that it is obligatory for the Public Authority to maintain the records properly and duly catalogued and indexed so as to facilitate the Right to Information under R.T.I. Act.

The rule of law now crystallized by various rulings of C.I.C. is that information/document that is not available cannot be furnished. The Right to Information Act can be invoked only for access to permissible information.

7. Since information sought i.e. minutes register for the year 1991 to 1993 of the Comunidade of Mapusa is an important document, and the same is not traceable a thorough inquiry is to be made regarding the same. In my view higher authorities should hold proper inquiry and bring to book the delinquent officer/official.

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

ORDER

The Appeal is partly allowed. The Respondent No. 1 is directed to trace the said register with the help of Registrar of Comunidade of Mapusa within 15 days from the receipt of this Order and report compliance.

In case the said register is not traced within the said period the Collector, North Goa either through himself or to depute any officer/Addl. Collector to hold inquiry regarding the said Register and to fix responsibility

for misplacement/missing of the said register 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.

Copy of the Judgment/Order be sent to the Collector, North Goa, Panaji.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 28th day of June, 2012.

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