

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 17/SIC/2011

Mrs. Blanche Carneiro,
Plot No. 51, Journalist Colony,
Alto Betim, Porvorim,
Bardez - Goa Appellant

V/s.

1) Shri Rajesh Naik,
Public Information Officer,
Secretary,
Village Panchayat Sodiem,
Siolim,
Bardez - Goa ... Respondent No.1.

2) Shri S. S. Naik,
First Appellate Authority,
B.D.O. (1), Bardez,
Mapusa,
Bardez - Goa ... Respondent No. 2.

Mr. Joseph Carneiro, representative of Appellant.
Respondent No.1 in person.

J U D G M E N T
(25.06.2012)

1. The Appellant, Smt. Blanche Carneiro, has filed the present Appeal praying that the P.I.O. be directed to furnish the requested certified certificate or in lieu, issue a fresh certificate based entirely on the existing contents of the old copy of the certificate issued earlier, bearing the Official Seal of the Panchayat and registration Ref. No. VP/SS/338/97/98 dated 12.03.1998; that the P.I.O. be directed to compensate the applicant for the undue tension and anxiety and other financial loss and delays caused; that the P.I.O. disregarded the orders passed by the F.A.A. and that disciplinary action be initiated against the P.I.O. and that penalty be imposed on the P.I.O.

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

That the Appellant, vide application dated 28.10.2010, 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 the

P.I.O. failed to furnish the information hence the Appellant preferred an appeal before the First Appellate Authority/Respondent No. 2. That the First Appellate Authority was pleased to pass an order whereby the P.I.O. was ordered by the F.A.A. to file a proper reply alongwith documents within 10 days. That on 18.01.2011 (after 82 days) the Complainant received by post two letters signed by the P.I.O. dated 15.01.2011 and 23.11.2010. That in the letter dated 15.01.2011 the said P.I.O. has made attempts to justify the delay in responding to his R.T.I. application by pleading that he had informed him by telephone that the information is ready and to come and collect the same. That the Complainant has not received any phone call till date originating from the P.I.O.

Being aggrieved the Appellant has filed the present appeal on the grounds as set out in the Memo of Appeal.

3. The Respondent No. 1 resists the Appeal and the reply dated 04.07.2011 is on record.

In short it is the case of the Respondent No. 1 that the present appeal filed by the Appellant is bad in law and is in glaring violation of the spirit of the R.T.I. Act, for the same is initiated by enclosing a copy of an application which differs from an application submitted to this P.I.O. and which is produced at page No. 4 as Exhibit A, a copy of the application submitted to P.I.O. The Respondent categorically denies having received said application from the Appellant on 28.10.2010. That the act of enclosing copy of different application proves her malafide intention and amounts to misuse of R.T.I. Act by the Appellant and deserves dismissal of this Appeal with strict warning and imposing costs on the Appellant for misleading this Commission. That the Appellant cannot be relied upon as regards the statements put forth in this appeal and this act of producing documents that differs from the original documents submitted to the P.I.O. casts doubts on her reliability and sincerity. That on 28.10.2010 Appellant filed an application for information under R.T.I. Act requesting therein for certified copy of a certificate issued under Ref. No. VPSS/338/97/98 dated 12.03.1998, which copy was enclosed to the application. That during this period Appellant and her husband, who showed urgency for the certified copy, were telephonically in touch with this respondent and on more than two occasions they enquired for the status of her request over the phone.

That the calls were attended by the V.P. Clerk and on their insistence some were answered by this Respondent. That on one such occasion on persistent insistence of the appellant, in good faith and on placing reliance, status as regards the certified copy of the certificate sought and its non-traceability was communicated to the Appellant, who had agreed to collect the reply and on whose verbal communication no intimation as regards the collection of reply was sent. That the Appellant after fully satisfying herself as regards her request and non-traceability of the copy sought, submitted fresh application on 20.11.2010 bearing date 12.11.2010 for issue of Divergence Certificate through her husband, who knowingly did not collect the reply on that day. That because Appellant was made fully aware of the reply in connection with her request under R.T.I. Act, Appellant submitted fresh application for issue of new divergence certificate and hence the categorical denial by the Appellant regarding no information given is false and misleading. That in compliance with the order passed by the F.A.A./BDO, Bardez, letter dated 15.01.2011 that was submitted alongwith the original reply dated 23.11.2010. That during the hearing before F.A.A./BDO it was explained how in good faith and because of persistent insistence of Appellant, complete information was shared over the phone, and how thereafter appellant through her husband submitted fresh application for issue of new divergence certificate and who knowingly did not collect the information from the Panchayat. That ground enlisted in the appeal is contrary to the actual happenings and is denied for want of sincerity on the part of Appellant. According to Respondent No.1 the appeal is liable to be dismissed.

4. Affidavit-in-rejoinder of the Appellant is on record. Reply of the Respondent No. 1 to Affidavit-in-rejoinder is on record. The reply of the Appellant dated 16.11.2011 to the Respondent No.1's affidavit-in-rejoinder and reply dated 07.12.2011 are on record. Reply of Respondent No. 1 dated 23.11.2011 and 03.01.2012 are on record.

I have carefully gone through the same.

5. Heard Shri Joseph Carneiro, the representative of the Appellant and the Respondent No. 1 in greater details.

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 vide application dated 28.10.2010 the Appellant sought certain information. The information consisted of certified copy of the letter dated 12.03.1998. Surprisingly, a Xerox copy of the said letter was enclosed and certified copy was asked/sought. According to the Appellant the same was not furnished and she filed an appeal before the First Appellate Authority. The F.A.A. passed the order as under on 12.01.2011:

“Both parties present. Respondent ordered to file a proper reply alongwith the documents, if any, within 10 days.”

By letter dated 15.01.2011 the Respondent No. 1 explained the factual background and also submitted the reply dated 23.11.2010. As per the same the said letter is not traceable in the Panchayat records.

7. The prayer of the Appellant before this Commission is as under:-

“1. The Hon’ble Commission may please direct the P.I.O. to furnish the requested certified Certificate or in lieu issue a fresh certificate based entirely on the existing contents of the old copy of the certificate issued earlier.....”

It is to be noted here that under R.T.I. Act the information as held by public authority or as available with the public authority is to be furnished. An analysis of Section 2(j) of the R.T.I. Act would make it clear that the right relates to information that is held or under the control of public authority. If the public authority does not hold information or the information cannot be accessed by it the Public Authority cannot provide the same under the Act. It is pertinent to note that Public Information Officer is not required to collect, compile or create information for the information seeker but he is expected to provide the information available in the material form.

In the case at hand the information is not traceable. In my opinion the P.I.O. to make diligent efforts to trace the same and, if available, the same should be furnished.

8. Another contention of the Appellant is about delay. It is now to be seen whether there is any delay in furnishing the information.

It is seen that application is dated 28.10.2010. It is seen that by letter dated 15.01.2011 the information is furnished i.e. alongwith this letter there is another letter dated 23.11.2010. The delay is from 28.11.2011 to 15.01.2011 i.e. about 47 days. I have perused the records. The Respondent No.1 has given his explanation for the delay. It is his case that he had informed on phone. This is disputed by the Appellant. According to her no phone was made. I have perused the reply, rejoinders and other material on record. I have seen the Application given to Respondent No.1 as well as copy produced alongwith application. The same is not the copy of the application given to the P.I.O. Normally copy is preserved so as to produce the same in the Court/proper forum, if required.

The penalty can be imposed only if there is no reasonable cause for not furnishing the information within the period of 30 days. Under Section 20 of the R.T.I. Act the Information Commission must satisfy itself that P.I.O. has without reasonable cause refused/not furnished information within specified time frame. The word "reasonable" has to be examined in the manner, which a normal person would consider it to be reasonable.

In the factual matrix of this case, and the pleadings of Appellant and Respondent No. 1 I am of the opinion that benefit is to be given to the P.I.O. and the reasons for delay seem to meet the 'Test of Reasonable cause' under Section 20 of the R.T.I. Act.

9. Respondent No. 1 also argued about false affidavit and about action to be taken. However this Commission has no jurisdiction in that regard. Parties are free to agitate the issue before competent forum.

10. Coming to the aspect of information the Respondent/P.I.O. to search the records properly and trace the same and if the same is traced to furnish the copy as sought. In case it is found that the concerned documents has been mischievously or deliberately misplaced then appropriate action be taken.

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

ORDER

The P.I.O./Respondent No. 1 is hereby directed to search the records properly and trace the same and if the same is traced, to furnish the information as sought by the Appellant vide her application dated 28.10.2010 within 30 days from the receipt of this order. The P.I.O. to inform the appellant accordingly.

In case it is found that the concerned document/information has been mischievously or deliberately misplaced then appropriate action be taken.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 25th day of June, 2012.

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

