

GOA STATE INFORMATION COMMISSION
'Kamat Towers' Seventh Floor, Patto, Panaji – Goa

Shri. Prashant S. P. Tendolkar ,
State Chief Information Commissioner

Appeal No. 87/SCIC/2017

Mr. Anil Vishnu Candolcar,
Flat No.6, Laxmi Sneha Building,
Opp. Pai Hospital,
Vadem, Vasco Da Gama. Appellant

V/s

- 1) Shri Manoj B. Arsekar,
Municipal Engineer I,
Public Information officer,
Mormugao Municipal Council.
- 2) The Chief Officer cum Public Information Officer,
Mormugao Municipal Council,
Vaso Da –Gama. Respondents.

Filed on :23/6/2017

Disposed on:15/2/2018

1) FACTS IN BRIEF:

a) The appellant herein by his application, dated 29/12/2016 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO of the Marmugao Municipal Council, hereinafter referred to as “**Respondent Authority**” under three points therein.

b) The said application was replied on 31/01/2017. By said reply, with reference to the points (1) and (2) it was informed that the documents will be given as soon as the file is traced and with reference to point (3) it was informed to the appellant to submit the licence number/occupancy certificate numbers.

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According to appellant the information as sought was not furnished and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

c) The FAA by order, dated 9/3/2017 dismissed the said appeal interalia upholding the order passed by the respondent no.1.

d) The appellant has therefore landed before this commission in this second appeal u/s 19(3) of the act.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 10/1/2018, through its advocate, filed the reply.

f) Vide said reply it is the contention of the PIO that on receipt of the application the same was forwarded to the concerned staff. The said staff envisaged some difficulty in tracing the file which contained the information at points nos. 1 and 2.

Regarding information at point (3), as it was not clear, the licence number/occupancy certificate was sought so that the information could be furnished.

It is stated by PIO that once again the concerned staff was directed to search the file but that the same could not be located and that further action as per rules is in progress. The PIO has filed on record the copy of the memorandum, dated 9/1/2018 (*appears to be wrongly dated as 9/10/2018*) issued by the chief officer.

g) Argument on behalf of the appellant and the PIO were heard. Adv. R. Pednekar appeared on behalf of the appellant

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whereas Adv. V. Pednekar appeared on behalf of the PIO. Adv. R. Pednekar for the appellant reiterated the contents of the appeal memo as his arguments. In support of his contentions he relied upon the judgment passed by the Hon'ble high court of Delhi in the case of ***Union of India V/S Vishwas Bhamburkar [(W.P.(c) 3660/2012 & CM 7664/2012(stay)]***.

h) Adv. V. Pednekar appearing for the PIO submitted that the information which was sought could not be furnished as the concerned files are not traceable inspite of efforts of the authority. According to him as the information is not available PIO has replied accordingly. Regarding the steps taken by the authority towards such non availability of the files he submitted that the memo has been issued.

Regarding the information at point (3) he submitted that the information pertaining to the licence of the structure was already furnished earlier in response to application, dated 22/11/2016 promptly and nothing was hidden. Hence there is no malafide on the part of the PIO in non furnishing of the information.

2) FINDINGS:

a) I have perused the records and considered the arguments of the parties. By the application, dated 29/12/2016, the appellant has sought the information in the form of certified copies on three points. The information was pertaining to trade licence No.T/O/4020 of business activity of one Shri Sandeep Chodankar. Information on point (1) and (2) of the said application is not furnished on the ground that the file is not traced and on point (3) for lack of licence number/occupancy number.

b) In the opening part of the application dated 29/12/2016 the appellant states that the PIO has under his application, dated 22/11/2016, has issued information that the trade licence is bearing number T/O/4020 and that it is issued in the name of one Sandeep Chodankar. Thus from the above it was clear that the concerned file was available after 22/11/2016 and the subject of the same was also known. What was sought by the subsequent application, dated 29/12/2016 are the further details pertaining to the same person and same licence number. The appellant vide his memo, dated 27/12/2017 has placed on record the copy of said earlier application dated 22/11/2016 and the reply of PIO to it, dated 26/12/2016, informing the details of Trade licence and the person holding the same.

c) If one considers the sequence of events, on 26/12/2016 the file pertaining to the subject of information was available but within 3 to 4 days thereafter i.e. after 29/12/2016 it went missing. Thus the plea of missing of the file during the short period i.e. from dispensation of first information and receipt of subsequent application for further information appears doubtful.

d) It is also to be noted that point (3) of the application dated 29/12/2016 is not furnished by PIO on the ground that the licence number or occupancy number is not furnished. As pointed above, the information itself was sought pertaining to licence No.T/O/4020 issued to one Sandeep Chodankar. Hence the response of PIO to direct the appellant to furnish licence number does not appear to be bonafide as the licence number was already known to the PIO as it was specified.

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e) The PIO in his reply filed before this Commission has submitted that the information could not be furnished as file could not be traced. In his said reply it is also contended by him that on 31/01/2017 PIO furnished the information by informing that the files cannot be traced. The memo to the members of the staff for searching the file is issued only on 9/1/2018 which is after the receipt of notice of this appeal. If the files were infact missing and noted so by the office, the immediate reaction of the authority ought to have been to direct investigation pertaining to missing file or take the assistance of the Police department for booking the culprit. Thus the entire theory of the PIO that the file is not traceable does not inspire confidence.

f) I have perused the order passed by the FAA in the first appeal filed by the appellant. On going through the same it appears that the said authority, though a senior officer to PIO had adopted a very casual approach. As a senior officer, it was incumbent upon the FAA to consider the period during which the files were allegedly non traceable. Assuming for a while that files were not traceable and issue appropriate administrative directions.

It is also interesting to note that with reference to point (3) of the application the PIO wanted the appellant to furnish only licence number/occupancy number to identify the information. As against this the FAA has held that the such details as required by PIO were also in adequate. The appellate Authority has also failed to consider that the appellant has infact furnished the licence number and the

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person in respect of whom the information is sought. The order of the FAA thus appears to be perverse and not in the spirit of the Right to Information Act.

g) Adv. A. Pednekar in the course of his arguments has relied on the ratio laid by High Court of Delhi in the case of **Union of India V/S Vishwas Bhamburkar**. On perusal of the said judgment it is found that almost similar case was decided by the Hon'ble High Court. The facts therein are almost identical and can be squarely applied in the present case. In the said case a copy of a project report, which was submitted by Department of Tourism Kerala information with specific reference to file number was sought. Said information was refused by PIO on the ground that it has not been received in the said ministry. When the matter landed before the central information Commission, the Commission directed Secretary, ministry of Tourism to inquire into the matter and submit the report to the Commission and appellant.

In the Writ petition filed by the Public Authority the Hon'ble High Court at para 7 thereof has observed.

“7.....Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/ officials responsible for loss of the record. Unless such a course of action is adopted, it would

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be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.”

The said Writ petition was finally dismissed with the following order:

“10.-----It is therefore ,directed that a thorough and meaningful inquiry in terms of the provisions of the directions of the commission be carried out by an officer not below the rank of a joint secretary to the Government within eight weeks from today and a copy each of the said report shall be provided to the commission as well as to the respondent before this court.”

h) A similar issue has arisen in the case of **Vivek Vishnupant Kulkarni V/s State of Maharashtra (Writ Petition No.6961 of 2012)** before High Court of Bombay. In the said case while dealing with the case of missing records, the State Information Commission has directed the FAA to register criminal complaint against all concerned and to submit report to Commission. The Hon’ble High Court by upholding the said order of the Commission has ordered for initiating criminal proceedings and also payment of cost to the seeker.

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i) In the present case the facts are almost similar. I find no grounds to uphold the contention of the PIO that the files are not traceable. The appellant could not obtain the information under the act causing inconvenience to him. I am unable to concur with the findings of the FAA.

j) In the background of the above facts, I find it appropriate to issue direction for initiating criminal proceedings through the officer senior in rank to the FAA. I also find prima facie case to order compensation to the appellant for the losses and detriment suffered by him. However before any such orders are passed I find it appropriate to hear the respondent authority.

In the above backdrop, I proceed to dispose the above appeal with following:

ORDER

i) The Director of Municipal Administration (**DMA**) shall conduct an inquiry regarding the said missing file and fix the responsibility for missing of said file.

ii) Such inquiry shall be completed within 45 (forty five) days from the date of receipt of this order by office of DMA.

iii) Based on the findings of such inquiry the DMA shall order initiation of appropriate disciplinary proceedings against the person responsible for loss/misplacement of the file as per his/her service condition. The DMA shall also order initiating appropriate criminal proceedings for causing loss of file, if found appropriate.

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iv) Copies of the report of such inquiry shall be provided to the appellant, respondent authority and the commission.

v) The right of the appellant to seek the same information, free of cost, from the PIO after the said file is traced, is kept open.

A copy of this order be sent to DMA for information and action.

Issue notice to the respondent authority viz. Marmugao Municipal Council, through its chief officer, to show cause as to why it should not be directed and ordered to compensate the appellant as contemplated u/s 19(8)(b) of The Right to Information/-Act 2005. The reply to notice shall be filed on **15/3/2018 at 10.30 am.**

Notify the parties.

Pronounced in the open court.

Sd/-

(Mr. Prashant S. P. Tendolkar)
State Chief Information commissioner
Goa State Information Commission
Panaji-Goa

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

Shri Prashant S. P. Tendolkar,
State Chief Information Commissioner

Appeal No. 87/SCIC/2017

Mr. Anil Vishnu Candolcar,
Flat No.6, Laxmi Sneha Building,
Opp. Pai Hospital,Vadem,
Vasco Da Gama, Goa.

....Appellant

V/s

- 1) The Public Information Officer
Manoj B. Arsekar,
Municipal Engineer I,
Margao Municipal Council.
- 2) Chief Officer cum Public Information Officer,
Mormugao Municipal Council.
Vasco Da Gama, Goa.

....Respondents

Dated: 01/10/2018

ORDER

1) While disposing the above appeal, this commission by order, dated 15/02/2018, had directed the Mormugao Municipal Council, (Council) through its Chief Officer to show cause as to why it should not be directed and ordered to compensate the appellant as contemplated u/s 19(8)(b) of the Right to Information Act 2005.

2) Pursuant to said notice the council filed its reply on 07/06/2018. The council also filed its written arguments on 23/08/2018 through its advocate.

3) In its arguments Advocate V. Pednekar for the council has reproduced the sequence of events from the date of application filed u/s 6(1) till the same was decided by this commission in the above appeal. This commission has already considered said

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submission while deciding the appeal and the same are redundant for the purpose of dealing with the issue of compensation.

As a ground for non imposition of compensation, the advocate for the council at para (11) of the written arguments has submitted that the contention of the commission that information was sought pertaining to licence No.T/0/4020 is not correct. The Council thus wants to emphasise that this Commission has proceeded on wrong assumption.

4) This commission after considering the reply finds that the grounds given for non imposition of compensation are not substantiated. As observed in the order passed by this commission while disposing this appeal, the appellant was furnished the part information which was contained in the file i.e. the details of trade licence. When further information pertaining to same trade licence was sought the same was not furnished on the ground of non availability of the file. From the application, dated 29/12/2016 u/s 6(1), information is sought in reference to trade licence No.T/0/4020. Thus it appears that requirement at point (3) also refers to the same.

Even otherwise, it is held that it pertains to some other subject and the same could not be furnished for lack of details the situation does not change in respect of points (1) and (2). The appellant could not get the information due to non traceability of file just within some days. The entire exercise of appellant to seek information was rendered futile due to lapse of council in maintain the files. Had the files been maintained by council appellant could have received the information.

5) In the above circumstances commission finds that the grounds furnished by council are not satisfactory and the appellant has to be compensated for the detriment suffered by him. Considering the above circumstances this commission finds that a sum of Rs. 3000/- would be just and adequate to compensation the appellant.

6) Considering the above background, this commission directs the Mormugao Municipal Council to pay the appellant a sum of Rs. 3000/- (Rupees three thousand only) as compensation. Said amount shall be paid by a crossed cheque drawn by the council favouring the appellant, within fifteen days from the date of receipt of this order by it.

Proceeding closed. Notify parties.

Pronounced in open hearing.

Sd/-
(Shri. P. S.P. Tendolkar)
Chief Information Commissioner
Goa State Information Commission
Panaji –Goa