

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

CORAM: Shri Juino De Souza: State Information Commissioner
Appeal no161/SCIC/2013

Shri Joe Mathias,
Mathias Plaza,
18th June Road,
Panaji – Goa.

..... Appellant

v/s

1. Public Information Officer,
North Goa Planning &
Development Authority,
Archdiocese Bldg.,
1st floor, Mala, Panaji – Goa.

.... Respondent/Opponent

2. The First Appellate Authority,
North Goa Planning &
Development Authority,
Archdiocese Bldg.,
1st floor, Mala, Panaji – Goa.



Relevant emerging dates:

Date of Hearing : 10-08-2016

Date of Decision : 10-08-2016

ORDER

1. Brief fact of the case are that the Appellant had vide an application dated 01/04/2013 sought certain information u/s 6(V) from the Respondent PIO, Panjim Planning and Development Authority pertaining to Sagar Co-operative Housing Society, Dona Paula-Goa.
2. It is seen that the information sought is on four different points viz letters bearing no 21(32)/80-SCHS from Dr V V R Varadachari dated 30/07/1980 and 08/08/1980 addressed to the Chairman, City Development Authority, Panaji-Goa, letter dated 26/12/1985 from Dr Alvaro Remigio Pinto and others and letter dated 25/04/1986 bearing no PDA/D/364/292/86 from D.R. Bhat, member secretary, Panjim Planning and Development authority addressed to Chairman, Sagar Co-operative Housing Society, Dona Paula-Goa.

3. The Respondent PIO vide letter no. NGPDA/ RIA/3/Vol.1V/ 259/2013 dated 29/04/2013 informed the information seeker who is the appellant herein that the file bearing no. PDA/D/364 is not readily available and efforts are being made to trace the same.
4. Not satisfied the appellant filed a First appeal on 10/05/2013 and the FAA after hearing both the parties passed the order dated 20/08/2013 directing the PIO to once again search the file and if traceable to call the Appellant for inspection of the file and after inspection furnish the required documents at the earliest. Being aggrieved the Appellant has filed a second Appeal u/s 19(3) with the Commission on 20/11/2013 and in his prayer has sought directions that the PIO furnish information and other reliefs.
5. During the hearing the Appellant is represented by Adv. L. Sawant holding for Adv. Aires Pinto Furtado whose vakalatnama is taken on record. The Respondent PIO is absent without intimation to the commission.
6. The learned Advocate for the Appellant submits that the reply of the PIO is vague and amounts to refusal of information. It is also contended that the impugned order of the FAA is bad in law as it speaks only about the non- availability of the file but does not mention whether the PIO has conducted any search to trace the missing file and questions as to how a file can go missing from a government department.
7. It is further argued that the FAA has not considered the fact that no reply is given by the PIO with respect to the first three points of the RTI application, besides the FAA has not prescribed any time limit within which the PIO should search the file and inform the appellant about the information documents and certified copies as sought in the RTI application to be supplied to the Appellant.



8. The Commission has perused the material on record including the reply of the PIO as well as the order of the FAA and finds that the reply of the PIO is indeed vague. Simply stating that the file bearing no. PTA/B/364 is not readily available in the office records is not acceptable as the claim of file missing or records not traceable is a serious issue and needs to be dealt with firmly.
9. The Commission has also perused the order of the FAA and observes that the FAA despite allowing the first appeal has not specified any time limit within which the said missing file is to be traced by the PIO. The FAA has also overlooked the fact that in the absence of such time bound directions it may take years to trace the missing file resulting in injustice to the Appellant which not only defeats the purpose of the RTI act but also amounts to a breach of sec 6 & 7 of the RTI act 2005.
10. A mere claim that the file is missing or not traceable has no legality as it is not recognized as an exception under the RTI act and amounts to a breach of Public Records Act, 1993 and which is punishable with imprisonment up to a term of five years or with fine or both.
11. Every Public Authority is duty bound to protect public records and a thorough search for the file and an inquiry to find out how the file has gone missing and which public servant is responsible and what disciplinary action is to be taken besides action under the Public Records Act as well as reconstruction of alternate relief are the least expected from the Public Authority.

Hon'ble Delhi High Court in Union Of India Vs. Vishwas Bhamburkar 2013(297)ELT500(Del) With regard to the plea of the Respondent authority of record being not traceable, has observed as follows: 5. *The Right to Information Act is a progressive legislation aimed at providing, to the citizens, access to the information which before the said Act came into force could not be claimed as a matter of right. The intent behind enactment of the Act is to disclose the information to the maximum extent possible subject of course to certain safeguards and exemptions. Therefore, while interpreting the provisions of the Act, the Court needs to take a view which would advance the objectives behind enactment of the Act, instead of taking a restrictive and hyper-technical approach which would obstruct the flow of information to the citizens.*

6. This can hardly be disputed that if certain information is available with a public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily, the information which at some point of time or the other was available in the records of the government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by that department for destruction of old record. Therefore, whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information sought by the applicant cannot be traced or was never available with the government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing his inability to provide the desired information.

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 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.

7. Since the Commission has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/readily traceable/currently traceable.

Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material 6 available to it forms a prima facie opinion that the said information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the government at some point of time or not. After all, it is quite possible that the required information may be located if a thorough search is made in which event, it could be possible to supply it to the applicant.

Fear of disciplinary action, against the person responsible for loss of the information, will also work as a deterrence against the willful suppression of the information, by vested interests. It would also be open to the Commission, to make an inquiry itself instead of directing an inquiry by the department/office concerned. Whether in a particular case, an inquiry ought to be made by the Commission or by the officer of the department/office concerned is a matter to be decided by the Commission in the facts and circumstances of each such case.

12. The Appeal is accordingly allowed. The Commission directs the PIO conduct a diligent search and take immediate steps to trace the missing file bearing no PDA/D/364/292/86 within 40 days of the date of this order and furnish the said information to the Appellant. The PIO is free to take assistance from any person whomsoever including the head of the Public Authority if need be who shall extend full cooperation in searching the relevant missing file. The PIO is also directed to furnish specific reply /information with respect to points 1, 2 and 3 of the RTI application which seems to have been overlooked / omitted in the reply by the PIO.

13. In the event that the said file is still not traceable or is missing from the department then the PIO is directed to file an affidavit / declaration with the Commission giving particulars and details of the efforts made to search and trace the file giving all dates and facts including fixing responsibility by also endorsing a copy to the Appellant within a further 15 days from the date of expiry of the above specified period of 40 days. The PIO should also file a missing complaint with the concerned police station in case theft of the file is suspected.

14. The Commission recommends that the Public Authority seriously consider the issue of 'Missing files' given by PIO's and initiate action under the Public Records Act 1993 so that the purpose of the RTI act which is to facilitate information is not defeated.

With these directions the Appeal stands disposed.

All proceedings in the Appeal case stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the Order be given free of cost.



(Juino De Souza)
State Information Commissioner