

GOA STATE INFORMATION COMMISSION

Seventh Floor, Kamat Towers, Patto, Panaji – Goa.

Shri Prashant S. P. Tendolkar
Chief Information Commissioner

Appeal NO.303/SCIC/2016

Adv. Vidhya M. Dessai,
H.No.214,Yamuna Apt.,
Ground Floor, Sirvodem,
Margao, Salcete, Goa.

..... Appellant.

V/s

1) Dy. Director of Tourism &
Public Information Officer(North)
Office of Department of Tourism,
Patto, Panaji Goa.

2) Asst. Director of Tourism &
Public Information Officer(North)
Office of Department of Tourism,
Patto, Panaji Goa.

3) Dy. Director of Tourism &
First Appellate Authority,
Office of Department of Tourism,
Patto, Panaji Goa.

..... Respondents.

Filed on : 29/12 2016

Decided on: 23/10/2017

1) FACTS:

a) The appellant herein by her application, dated 20/5/2016, filed u/s 6(1) of The Right to Information Act 2005 (Act) sought certain

information from the Respondent No.1,PIO under three points therein being (i) copy of the letter, dated 18/8/2008,(ii) copy of possession certificate, dated 11/9/2008 and (iii) copy of letter, dated 11/9/2008.

b) The said application was replied by PIO on 20/6/2016 informing the appellant that the file concerning the information was not traceable and as the information as sought was not furnished the appellant filed first appeal to the respondent No.2 being the first appellate authority (FAA).

c) The FAA by order, dated 13/10/2016 ordered the PIO to inform the director of tourism regarding the non traceability of the file and to take necessary measures to trace the same and if need arises to file FIR for missing/untraced file and further to provide the information to the appellant free of cost once the file is traced.

d) The appellant being aggrieved by said response of PIO and order of FAA, has landed before this commission in this second appeal u/s 19(3) of the act with the contention that the information is still not provided and seeking order from this commission to direct the PIO to furnish the information as also for other reliefs, including compensation.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 8/6/2017 filed a reply to the appeal. In his said reply the PIO has contended that as the information is not held by public authority the same cannot be accessed by it u/s 2(f) or that if the information is non est the authority cannot provide the same. It is further contended that efforts are being made to trace the file and once it is found the required information will be provided.

The PIO has further contended that as per the order passed by FAA the Asst. Director of Tourism has filed a complaint regarding the lost/misplaced file to the Police Station and that a copy of the letter, dated 18/8/2008 is sought from the Mamlatdar. PIO has annexed to the said reply the copy of the letter addressed to Police Inspector Panaji regarding the missing file .

f) As the contention of the PIO was that the file is missing, he was directed to file an affidavit affirming such fact, which was accordingly filed on 12/10/2017. In the said affidavit the PIO Shri Rajesh Kale, has affirmed that efforts are taken to trace the file and that the information will be provided once it is found.

He further affirmed that the letter dated 10/7/2007 from the under secretary(R-1) is found at the time of search and that the same is produced. However no such letter is found alongwith the said affidavit. The appellant filed her written arguments.

2. FINDINGS:

a.) I have perused the records and also considered the submissions of the parties. The information sought pertains to the year 2008 and the same is sought in the year 2016 by the appellant. It is not the contention of the PIO that the said information is destroyed based on any order or as per the law. Hence the same should be made available to the appellant.

b.) In the present case it is the contention of PIO in his reply dated 8/6/2017 is that as the authority does not hold the information the same cannot be accessed under section 2(f) of the act. In this case it is nowhere the case of PIO that the said information was not accessible to it. On the contrary it is the contention of PIO that though the information is held by it the same is presently untraceable as it is misplaced. Thus had it been in the

records the same would have been dispensed. In saying that the information is not accessible and hence not dispensable u/s 2(f), the PIO has misinterpreted the scope of said section 2(f) of the act.

c) In this case it is only the lapse and failure of the authority to preserve the records which has lead to non traceability of the file. In this case it is about six(6) months after the order of FAA that the FIR is filed. From the above it appears that the authority itself was not serious of preservation of records. Thus the entire action on the part of PIO appears to be casual. Such an attitude would frustrate the objective of the act itself.

d) The appellant in her submissions has contended that non availability of records is not a defense to deny the information. In support of her contention the appellant has relied upon the order passed by the central information commission.

Not with standing the position that the decision of the Central Information commission cannot act as precedent, I do not dispute the ratio therein. The appellant herein has not disputed that the file according to PIO is missing and hence the same is not in existence

now. The same therefore cannot be ordered to be furnished now.

e) Considering the above position and as the file is not traced till date, as is affirmed by the PIO vide his affidavit, dated 12/10/2017 filed here, I am unable to pass any direction to furnish information as it would be redundant now. However that itself does not absolve the PIO or the authority to furnish the information to the appellant. An appropriate order therefore is required to be passed so that the liability is fixed and records are traced. The appellant has also prayed herein for compensation from the authority for inconvenience caused to her.

In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following :

ORDER

The Director, Department of Tourism shall conduct an inquiry regarding the said missing file and fix the responsibility for missing said file. The Director shall complete such inquiry within 2 (two) months from the date of receipt of this order by him. The director shall also initiate appropriate proceedings against the person responsible as per his/ her service condition. A copy of the report of such inquiry

shall be sent to the appellant and the right of the appellant to seek the same information from the PIO free of cost is kept open, after the said file is traced. A copy of such report shall be also sent to this commission for further orders, if found necessary.

Issue notice to the authority viz. Department of Tourism, through its director, to show cause as to why it should not be ordered to compensate the appellant as contemplated u/s 19(8)(b) of The Right to Information Act 2005, returnable on 28/11/2017 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

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..... Respondents.

Date: 9/3/2018

1. While disposing the above appeal, this commission by order, dated 23/10/2017,has directed the department of tourism to conduct an inquiry regarding the missing file. The said inquiry was ordered to be completed within two months from the date of receipt of the said order.

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2. By the same order this commission had also directed the respondent authority i.e. Department of Tourism, through its director, to show cause as to why the department should not be ordered to compensate the appellant as contemplated u/s 19(8)(b) of the Right To Information Act 2005.
3. The order of the commission was served on the respondent authority i.e. Department of Tourism, through its director. The officials of the authority appeared and sought extension of time to complete the inquiry as ordered. Such extension was granted for completing the inquiry. However in spite of several opportunities the authority failed to file any reply to the said notice issued u/s 19(8)(b) of the act. On 13/2 2018 the authority again sought time to file reply to the said notice on the ground that the inquiry in respect of the missing file is going on . The said request was rejected by this Commission by a detailed order, interalia holding that the said inquiry has no bearing over the order for compensation u/s 19(8)(b) of the act. The submissions of the parties was heard. Even on subsequent hearings no cause was shown.
4. I have perused the records. The request of the appellant u/s 6 (1) of the RTI Act 2005, for supply
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of information was rejected by the PIO of the authority on the ground that the concerned file is not traceable. The PIO had also informed the appellant that once the file is traced the information would be furnished. In the course of this second appeal u/s 19(3) the PIO was directed to prove the fact of non traceability of the file and accordingly he has filed the affidavit interalia affirming that the information sought is not traceable.

5. On further perusal of the records it is seen that the information sought in 2016 by appellant pertains to the year 2008. It is the duty of the authority to preserve the records unless they are destroyed in accordance to the rules/orders/guidelines issued for weeding out the records. The fact that the records were at some time existing is not disputed. Under the act a citizen is entitled to have information as a right unless such disclosure is exempted u/s 8 or 9 of the act. In this case due to non availability of information, the appellant had to suffer mental agony for about one year from the date of the application. Had the information been maintained by the authority the torture could have been avoided. In view of culpability of the authority to maintain the

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records, the appellant could not have the information. The appellant thus is required to be compensated.

In the facts of the case I find that the ends of justice shall be met by directing the respondent authority to pay to the appellant a sum of Rs.5000/-as compensation.

6. I therefore direct the Department of Tourism, Government of Goa to pay to the appellant a sum of Rs.5000/- (Rupees five thousand only) as compensation. Said amount shall be paid to the appellant directly within **FIFTEEN DAYS** from the date of receipt of this order by it. The order be served on the department through Director, Department of Tourism, Govt. of Goa.

Parties to be notified.

Proceedings closed.

Pronounced in the open proceedings.

Sd/-

(Mr. Prashant S. P. Tendolkar)

State Chief Information Commissioner

Goa State Information Commission

Panaji-Goa

