

GOA STATE INFORMATION COMMISSION

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

Appeal No. 79/SIC/2015

Smt Asmit Bhomkar ,
H.No. 177. Pether Carambolim,
Tiswadi Goa

..... Appellant

V/s.

1.The Public Information Officer,(PIO)
Village Panchayat Secretary,
Old Goa Village Panchayat of se, Old Goa.

2.The First Appellate Authority,
Block Development Officer ,
Tiswadi Goa .

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 09/07/2015
Decided on: 15/11/2016

ORDER

1. The appellant Smt. Asmit Bhomkar by letter dated 28/11 2014, sought certain information at point No. 1 to 7 as stated there in the said application from Respondent No. 1 PIO Village Panchayat Ella Old Goa U/s 6(1) of the Right to Information Act .
2. As the same was not replied by the Respondent No. 1 PIO, the appellant preferred the 1st Appeal u/s 19(1) before the Block Development Officer being First Appellate authority on 5/3/2015 and the Respondent No. 2 First appellate authority by an order dated 09/04/15 disposed the appeal on the ground that the information have been already furnished to the appellant on 08/04/2015.

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3. Being aggrieved by the order of Respondent NO. 2 FAA and also by the action of both the Respondents, the present appeal is filed before the commission under section 19(3) of Right to Information Act on 09/07/2015 seeking directions as against Respondent No. 1 PIO to make available the certified copies of correct and proper information sought by her from PIO vide her letter dated 28/11/2014 and for invoking penal sections .
4. After notifying the parties matter was listed on board and taken for hearing. Appellant appeared in person on behalf of Respondent No.1 PIO Shri Shirish Tari appeared and behalf of Respondent No.2,FAA non appeared.
5. Reply came to be filed on behalf of respondent No. 1 PIO on 19/9/2016 there by also enclosing the copies of photographs Argument were advanced by both the parties on 19/10/2016 .
6. It is the submission of the appellant that the Respondent No. 2 FAA in collusion with Respondent No. 1 PIO passed the impugned Roznama order dated 9/4/14 without even perusing the unsatisfactory reply dated 8/4/15 filed by Respondent No. 1 PIO . and that the respondent NO. 1 PIO has furnished the misleading information in much as the Respondent No. 1 PIO has stated that the "information not traceable" which is not as per mandate of RTI Act.

It is further contention of the appellant that the information purposely not sought to be given only to deceive the appellant and that the Respondent No. 2 FAA has acted in very bias manner and tried to protect the Respondent No. 1 PIO .

7. The Respondent No. 1 PIO argued that the document sought by the appellant are pertaining to the year 2001 and he along with his staff made a details search of all the records available in the records of the village Panchayat of old Goa and that they found that many records have been destroyed by white ants and

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rodents over a period of time which cannot be identify . He is further submitted that there may be possibility that the information sought by the appellant could be amongst the records which has been destroyed by the white ants and rodents . Vis-avis he pointed out the photographs relied by him which depicts the same.

8. I have perused the records and also considered the submissions of the parties.

Section 2(f) of the act which classifies information reads:

"2(f) "information" means any , material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in for"

Section 2(j) of the act gives the extent of right to the seeker as under:

"2(j) right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:

- i. inspection of work, documents, records;*
- ii. taking notices, extracts or certified copies of documents or records;*
- iii. taking certified samples of material;*
- iv. Obtaining information in the form of diskettes, floppies, taps, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"*

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9. A conjoint reading of these provisions shows that a seeker can exercise his rights in the form and manner as specified in section 2(j) in respect of the records as specified in section 2(f)
10. Public authorities are required to maintain the information and the PIO is designated to furnish same to the public. In other words the PIO is the custodian of information and such information is in the registry is required to be dispensed to the applicant/information seeker unless exempted u/s 8 and 9 of the Act. :
11. It appears that the records were in existence and are in their possession. The only ground for denial as raised by PIO is that the records pertaining to information is destroyed by White ants and rodents. It is the contention of the appellant that the PIO has not maintained the records in the condition they were required to be kept. It is also the submission of the appellant that the answer of the PIO is not satisfactory specifically with reference to the steps taken for preserving the records and as to when the said information would be available.
12. It is pertinent to note that the reply dated 8/4/15 of the Respondent No. 1 PIO given to appellant have been given not within stipulated time. Though the application was filed on 28/11/14 the reply was only given on 8/4/15 and that too as the records sought by her are not traceable". Such a reply was given in a very casual manner . They have not assigned any reasons why the said records are not traceable and what efforts are made by them to trace the same. The photographs which are relied by the Respondent No. 1 PIO shows that Public authority has failed to take care of their records and to preserve them in proper form Such an action on a part of the PIO is against the mandate of RTI Act .

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13. It has been held by the **The Hon'ble High court Delhi in Writ Petition No. (c)3660 and cm 7664/12 union of India V/s Vishwas Bhamburkar**, with regards to the of the plea respondent Authority of records will not traceable has observed as follows.

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 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. 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 to the concerned department unless it has been destroyed in a accordance with the rules framed by the 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 whenever it may 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

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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 regards, 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 in to public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.

14. 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 to the concerned department unless it has been destroyed in a accordance with the rules framed by the department for destruction of old record..
15. Unless such a course of action is adopted, it would not 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 in to public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.
16. *It is the duty of Public authority to find out the alternative and to provide necessary relief to the appellant who is seeking information as her rights.*

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The public authority should see that main purpose of RTI Act to facilitate the appellant to get information, is not defeat by this kind of excuses.

17. *It is the need of the hours that demands that every records creating agency shall nominate one of its officers as records officer to discharge the functions under this Act who shall be responsible for.*
- a. *Proper arrangement, maintenance and preservation of public records under this charge.*
 - b. *Periodical review of all public records and weeding out public records of ephemeral value.*
 - c. *Appraisal of public records which are more than twenty-five years old in consultation with the national Archives or India or as the case may be the archives of the union territory or states with a view to retaining public records of permanent value.*
 - d. *Adoption of such standards, procedures and techniques as may be recommended from time to time by the National Archives of India for improvement of record management system and maintenance of security of Public records*

ORDER

18. Considering the above facts it appears to me that the practice of the Public authority involved herein that is Village Panchayat Old Goa regarding preservation of the records is not in conformity with the spirit of this act and hence I find it necessary to issue appropriate direction and recommendation for taking steps for

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promoting such conformity, by exercising the rights under section 25 (5), of the Act. I find it necessary to issue appropriate direction to the public Authority involved herein to take urgent appropriate majors to preserves the Records in such a way that the same are ultimately available for the inspection of the public and /or obtaining the copies thereof by the information seeker. This exercise for preservation and maintenance of the records be done by following the provisions of the public records Act 1993.

The copy of the order be sent to Director of Panchayats, and also copy may be forwarded to Chief Secretary State of Goa, Secretariat, Porvorim , for issuing necessary direction to all public authorities for the appointment of **Record Officer in each office** for preservation of records and for giving appropriate direction and procedure for preservation of records so that very purpose of RTI Act will not be defeated.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Proceedings Stands Closed.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Pronounced in the open court.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa