

GOA STATE INFORMATION COMMISSION

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

Appeal No. 140/2018/SIC-I

Shri Allan F.C. Andrade,
H.No. 2B, Per Seraulim,
P.O. Colva, Salcete-Goa.

.....Appellant

V/s.

1. Public Information Officer
O/O the Mamlatdar of Salcete,
Margao Goa Goa.

..... Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 07/06/2018

Decided on:26/7/2018

ORDER

1. The appellant herein Shri Allan F.C. Andrade by his application dated 5/1/2018 filed u/s 6(1) of the Right to Information Act, 2005 sought certified copies of the mutation case No. 214 of form I & XIV of Survey No. 230/17 of village Velim, from the Respondent No. 1 Public Information Officer, of the office of Mamlatdar, Margao, Salcete- Goa.
2. According to the appellant the said application was not responded to by the Respondent PIO within time as contemplated under RTI Act and as such deeming the same as refusal the appellant filed first appeal on 27/3/2018 before the Dy. Collector and SDO of Margao, Salcete Goa being First appellate authority.
3. According to the appellant the First appellate authority (FAA) by an order dated 17/4/2018 directed the Respondent PIO to furnish the said information to the appellant as sought by him vide his application dated 5/1/2018, free of cost within 10 days from the date of the order.
4. It is the contention of the appellant that the Respondent did not comply the order of FAA neither furnished him the information

despite of repeated inquires as such being aggrieved by the action of the Respondent PIO and as he did not received any certified copy of the document, Appellant preferred a present appeal on 17/6/2018 in terms of section 19(3) of RTI Act, thereby seeking directions as against respondent PIO for furnishing him correct information and for invoking penal provisions.

5. In pursuant to the notice of this commission the appellant was present in person. Respondent PIO was represented by APIO Sharad Naik who submitted reply of PIO dated 18/7/2018 interalia submitting that he made every efforts to trace the record and the information sought are not available in the office records as per the Talatis report. The respondent PIO also file affidavit on 26/7/2018 affirming that the file pertaining to mutation case No. 214 of Velim Village is not traceable/ not available .
6. Arguments were advanced by both the parties .
7. The appellant submitted that the said information was required by him on urgent basis as he wanted to produce the same in proceedings before Hon'ble High Court. He further submitted that he has sought the said information some were in January and till date the same is not furnished to him . He further submitted that the dealing clerk was arrogant and not cooperative when he approached him for inquiry. He further submitted that lots of hardship has been caused to him in pursuing his said aplicaiton before different authorities .
8. I have scrutinize the records available in the file. And also considered submission of the parties .
9. Apparently the said application dated 5/1/2018 filed u/s 6 was not responded within 30 days time interms of section 7(1) of RTI Act, 2005 by the PIO. The order of the FAA was not complied by the Respondent PIO. Assuming for a while that PIO could not respond and furnish the information because of the non traceability of the

records , however the PIO was duty bound to inform the said fact to the appellant at the initial stage itself. The PIO must introspect for non furnishing of the correct information land the citizen/information seeker before the FAA and also before the commission resulting into unnecessary harassment of a common men which is socially abhorring and legally impermissible . As there is nothing on record that such lapse on his part is persistent a lenient view is taken in the present case and he is hereby directed to be vigilant henceforth while dealing with RTI matters and lapses if found henceforth shall be viewed seriously.

10. It is the contention of present PIO that the information is not available/not traceable in their records, as per report of Talathi. It is not the contention of the PIO that the said information is destroyed based on any order or as per the law or that records are weeded out as per the procedure . 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. From the above it appears that the authority itself was not serious of preservation of records. Such an attitude would frustrate the objective of the act itself. Besides, that the ground of " non availability of records " is not qualified to be exempted u/s 8 of the RTI act .

11 The Honble High court of Delhi in writ petition © 36609/12 and CM 7664/2012 (stay) in case of Union of India V/s Vishwas Bhamburkar has held

" It is not uncommon in the Government departments to evade the 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 otherwise was available in the records of the government should continue to be available to the concerned department unless it has been destroyed in accordance with the rules framed by the department for destruction of old records. Even in the case

where it is found that desired information though available at one point of time is now not traceable despite of best efforts made in the regards , the department concerned must fix responsibility for the loss of records and take action against the officers /official responsible for the loss of records. 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 the disclosure ”.

12. Considering the above position and the file/documents are not available now, 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 public authority concerned herein 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.

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

ORDER

1. The Collector of south Goa District at Margao, Salcete, Goa or through his authorized officer shall conduct an inquiry regarding the said missing of mutation case No. 214 of form I & IXIV of Survey No. 230/17, Village Velim and fix the responsibility for missing said file/documents. He shall complete such inquiry within 4 months from the date of receipt of this order by him. The Collector of South Goa District at Margao 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.

2. The copy of the order shall be sent to Collector of South Goa District at Margao for information and for appropriate action.

With the above directions, the appeal proceedings stands closed .

Notify the parties.

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

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