

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

CORAM: Shri Juino De Souza: State Information Commissioner

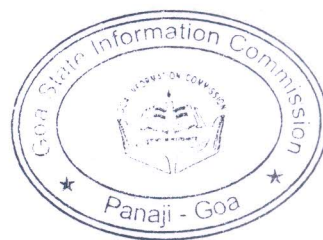
Complaint No:95/SIC/2012 | 678

Shri J. T. Shetye,
C/o Mapusa Jana Jagruti Samiti,
H. No.35, Ward no. 11,
Khorlim, Mapusa – Goa.

..... **Complainant**

v/s

1. Public Information Officer,
Additional Collector – I (North),
Collectorate Building, 1st floor,
Panaji – Goa.
2. Public Information Officer
Mamlatdar,
O/o. the Mamlatdar of Bardez,
Mapusa – Goa.
3. Public Information Officer
Inspector of Surveys & Land Records,
City Survey, Mapusa – Goa.
4. The First Appellate Authority,
The Dy. Collector & SDO,
O/o the Dy. Collector & SDO,
Mapusa, Bardez – Goa.



..... **Respondents**

Relevant emerging dates:

Date of Hearing : 23-08-2016

Date of Decision : 23-08-2016

ORDER

1. BRIEF facts of the case are that the Complainant Shri. J.T. Sheye had filed an application dated 09/12/2011 seeking certain information from the Respondent PIO, Addl Collector-1, North in respect of Crop Survey Registration Order of City Survey, Mapusa, passed by the Collector of North Goa for the period from 2009-2010 and 2010-2011.
2. The PIO, Dy. Collector (Rev), North vide Memorandum No.30/5/2011/RB/RTI/FS dated 21/12/2011 transferred the RTI application to the PIO, the Mamlatdar of Bardez under section 6(3) of RTI Act 2005 with a request to furnish the required information directly to the applicant.

3. However the PIO O/o Mamlatdar of Bardez further transferred the application vide letter dated 19/03/2012 to City Survey & Land Records, Mapusa, Goa and the Inspector of Survey & Land Records vide letter no ISLR/CTS/MPS/RTI/24/2012/1134 DATED 27/03/2012 informed the Complainant that information at Sr No from 1 to 4 is not available in the office records.
4. Not satisfied the Complainant thereafter preferred first Appeal on 31/01/2012 before the Dy. Collector & SDO, Mapusa and the FAA vide his order dated 19/03/2012 agreed with the submission of the PIO, Mamlatdar of Bardez and upheld the reply of the Inspector of Survey & land Records that information at Sr No from 1 to 4 is not available in the office records and being aggrieved with such order the Complainant has filed a Complaint with the commission on 29/05/2012.
5. The Complainant has prayed at point 2) that the office of Additional Collector (I) North after verifying that crop survey of cultivation of crop for the year 2009-2010 and 2010-2011 was ordered by the office of Collector North, had accepted my application dated 09/12/2011. Whatever information is asked is definitely available in Mamlatdar's office. The First Appellate Authority without applying his mind has passed an order on the basis of statement made by the representative of the PIO, the Mamlatdar of Bardez stating that the crop survey records will be available with city survey i.e Inspector of Survey & Land Record, Mapusa. At point 3) To invoke section 20 (1) and 20 (2) and impose penalties on the concern PIO;s of two hundred and fifty rupees each days till the necessary information is furnished to the Complainant and recommend for the disciplinary action under their service condition as per section 20 (2) of RTI Act and at point 4) to give proper directions/instruction to the First Appellate Authority the Dy. Collector and SDO Shri. Jayant Tari for deciding the First Appeals of the Appellants without applying his mind



6. During the hearing the Complainant Shri J.T. Shetye is present in person along with Suresh P. Tivrekar. The Respondent No 1 PIO is absent. The Respondent No 2 PIO is also absent. The Respondent No 3 PIO represented by Shri Yogesh B. Mashelkar, Head Surveyor is present in person and the FAA is also absent.
7. The Complainant submits that it is clear that the report regarding crop survey has gone missing from the record books of the office of the Mamlatdar and therefore it was prayed before the FAA to give directions to the PIO, Mamlatadar to lodge a FIR / Police Complaint in respect of missing records and if such a report is available to furnish a copy to the Appellant on payment of necessary fees.
8. The Complainant further submitted that nothing has been done since and the matter is prolonging unnecessarily before the commission and the concerned PIO's are also not appearing to present the facts and that directions to the PIO, Mamlatdar of Bardez to file a police complaint about the missing records.
9. The Commission on perusal of the file indeed observes that information on Crop Survey Registration Order of City Survey, Mapusa, passed by the Collector of North Goa for the period from 2009-2010 and 2010-2011 has not been furnished to the Complainant nor a police complaint has been filed about the missing records.
10. A mere claim that the records are 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. 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 and 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.



8. The Complaint is allowed. The Commission observes that the FAA without ascertaining the proper facts or conducting an enquiry has passed an order based on the mere submission of the PIO that the information is with the Inspector of Survey & Land Records when it has already been stated by the Public authority that the records are not available with them.



9. The Commission accordingly directs the PIO, Mamlatdar of Bardez to conduct a diligent search and take immediate steps to trace the missing records / file within 60 days of the date of this order and furnish the said information to the Appellant.
10. The PIO, Mamlatdar of Bardez is also free to take assistance from either the office of Inspector of Survey & Land Records or any other State Government Agency holding the said information relating to Crop Survey Registration Order of City Survey, Mapusa, passed by the Collector of North Goa for the period from 2009-2010 and 2010-2011. The PIO may also take the assistance of the respective Head of the Public Authorities (HOD's) if need be who shall extend full cooperation in searching the relevant missing records.
11. In the event that the said file / records are still not traceable or are missing 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 Complainant within a further 30 days from the date of expiry of the above specified period of 60 days. The PIO should also file a FIR/ Police complaint with the concerned police station in case theft of the file is suspected.

With these observations the Complaint case stands disposed.

All proceedings in complaint case also 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.



Under Secretary cum Registrar
Goa State Information Commission

Sc-
(Juino De Souza)
State Information Commissioner