

**BEFORE THE GOA STATE INFORMATION COMMISSION
Seventh Floor, Kamat Towers, Patto, Panaji, Goa.**

Appeal No. 133/SIC/2014

Shri Sandeep H. Konadkar,
H.No. 366 Oshelbagh Dhargal Nr. Rashtroli Mandir,
Pernem-Goa.Appellant

V/s.

1. Public Information Officer (PIO)
Deputy Collector/SDO,
Pernem Sub Division, Pernem- Goa.
2. First Appellate Authority (FAA),
Additional Collector-I,
North Goa District, Panaji -Goa.Respondents

Appeal filed on: 18/12/2016

Decided on: 19/01/2017

ORDER

1. By an application dated 06/05/2014 filed under section 6(1) of the Right to Information Act 2005 the appellant sought certain information from Respondent No. 1 Public Information Officer (PIO) of Office of the Deputy Collector, Pernem-Goa. In response to the said letter the Respondent No. 1 PIO by its letter dated 22/05/2014 called upon the Appellant for inspection of the records. On the ground that the information sought was voluminous, need to be compiled and then to collect the copies of the same on payment of the necessary fees.
2. Since the Appellant was not satisfied with the reply of the PIO he preferred First appeal with Respondent No. 2 First Appellate Authority (FAA) on 18/06/2014 against deemed refusal.
3. Thereafter the Respondent No. 1 PIO by his letter dated 03/07/2014 informed the Appellant that the person who was handling sound permission during the said period was pre-employment staff and who has been transferred outside

department. And that the present dealing hand was not aware of where the relevant documents of the said period are kept and the deputy collector who had issued said permission is also transferred. It is also further submitted that the entire staff is put on job to find out the relevant documents and they could get register maintained toward issue of the sound permission during the said period. Vide said letter he has informed the appellant that the copies of the music permission are reported to be not traceable in the office records and furnished vide said letter copies of inward and outward registers to the Appellant.

4. The Respondent No. 2 FAA passed an order on 16/07/2014 thereby dismissed the Appeal on the ground that information is already provided to him.
5. Being not satisfied with the reply the appellant has made letter dated 25/07/2014 bring to the notice of PIO that the requested information was not furnished to him and that the copied of inward-outward registers which was not requested by him was furnished to him.
6. Being aggrieved by the action of both the Respondents, the present second appeal under section 19(3) of RTI Act came to be filed before this Commission on 18/12/2016. In pursuant to the notice issued by the Commission Appellant opted to remain absent. Respondent No. 1 PIO was represented by Shri Namdev Sawal and Respondent No. 2 FAA was represented by Satish Naik. Replies came to be filed on behalf of both the Respondent on 17/05/2016.
7. I have perused the record available in the file. The records that order was passed by the FAA on 16/07/2014. The record also shows that letter was made by the Respondent No. 1 PIO on 26/08/2014 to appellant volunteering to give the inspection of the file. The copies of the information in respect of the information pertaining to Roznama/ Proceeding sheets of partition proceedings under section 61 of LRC and orders provided under section 61 of LRC was offered on 26/08/2014. Apparently there is delay in replying application of Appellant filed under section 6 (1) of RTI Act 2005.

However before coming to merits of the case the issue which has to be decided is whether the second appeal is filed within the period of limitation or not.

The said first appeal was disposed on 16/07/2014 by the Respondent No. 2 FAA and the said proceeding sheet has been relied upon by the Respondent No. 2 FAA.

It is one of the grievance of the Appellant in this Appeal that the Respondent No. 2 FAA has not furnished him the copy of the order till date of filing present appeal even though he has asked for the same on 25/07/2014.

It is his further grievance that the PIO has unnecessarily and for no reason tried to delay infurnishing of the information on the pretext of the inspection.

According to the Appellant that the information given by the PIO that "***the information not available***" is false. According to the Appellant the PIO tries to misguide him. It is on these ground that the petitioner has sought the intervention of the Commission to furnish him necessary documents.

Even though the present appeal is not filed within the limitation, the facts remains that the copy of the order passed by the FAA was not furnished to him and as such the undersigned Commissioner's considering the mandate of RTI Act and also in the interest of justice thereby condone the delay and admit the present appeal.

8. It is pertinent to mentioned that since the reply of Respondent No. 1 PIO was filed before this Commission without enclosing the copies of the annexure there too from A to E which were relied by them, the representative of the Respondent No. 1 PIO was directed by this Commission to place on records annexure as stated above. Despite of giving opportunities they failed and neglected to produce the annexure on records. Such a Act on the part of respondent PIO is condemnable it appears that they have filed reply before this commission just as mere formality. The PIO has never appeared before this Commission to substantiate his case as such it appears that he is not interested in contesting the case seriously.

9. The Right to information Act, 2005 has been enacted with the objective of promoting transparency and accountability in the working of the Government. It empowers the citizens to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.
10. Be that as it may be, a mere claim that the file is missing has no legality as it is not recognized as exception under the RTI Act. If the file or document is really not traceable, it reflects the inefficient and the pathetic management of the public Authority . If the file could not be traced inspite of best efforts, it is the duty of the Respondent authority to reconstruct the file or develop a mechanism to address the issue raised by the appellant.
11. Unless proved that the records were destroyed as per the prescribed rules of the destruction /retention policy, it is deemed that records continues to be held by public authority. Claim of missing file or not traceable has no legality as it is not recognize as exception by RTI Act . By practice" Missing file" cannot be read into as exception in addition to exception prescribed by RTI Act. It amounts to breach of public records Act, 1993 and punishable with imprisonment up to a term of five years or with fine with both. Public Authority has a duty to initiate action for this kind of loss of Public records , in the form of " Not traceable" or "Missing" . The public authority also has a duty to designate an officers as " Record Officer" and to protect the records ,. A through search for the file, inquiry to find out public servant responsible, disciplinary action and action under public records Act, reconstruction alternate file, relief to the person affected for the loss of file are the basic action the public authority to legitimately expected to perform .

Missing of such records should invite criminal complaint against officials under 201 of IPC.

12. The Hon'ble High Delhi court in union of India V/s Vishwas Bhamburkar , with regards to the of the plea of

Respondent Authority of "records are 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 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.

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 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 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.

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 available to it forms a prima facie opinion that he 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 to 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."

13. *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 his rights.*

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.

14. It reveals from the records by the letter of PIO dated 26/08/2014 directing the appellant to inspect the file with respect of point no. 4 and 5 one can be presumed that information available with them.

15. *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.

16. The Commission also recommends to the public authority to consider the issue seriously, as this Commission has been hearing excuse of missing files on many occasions and also to initiate action as per the public records act 1993 against responsible person. The Public Authority should see that the main purpose of Right To Information Act to facilitate to information seeker to get the information is not defeated by such kind of excuses.

17. Considering the above facts it appears to me that the practice of the Public authority involved herein that is a Deputy Collector Pernem 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 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 seeker. The Commission also recommends the public authorities to take appropriate steps to micro film the said records if original records are mutilated. This exercise for preservation and maintenance of the records be done by following the provisions of the public records Act 1993. The appellant herein shall be entitled to monitor and seek necessary feedback from the public Authority i.e Deputy Collector, Pernem-Goa and after compilation of the records and its preservation, the Public Authority shall provides the information sought by the appellant free of cost after an intimation to this commission.

Considering the fact that the process of preservation of the records may involved other authorities like the Revenue Department , Director of Archives, etc the copy of the order be sent to **Collectorate of North Goa as well as South-Goa, Panchayats, Municipalities 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.**

In the circumstances considering the conduct of PIO I find that this is the case were the request of the Appellant for the grant of Penalty to be genuine as such it would be appropriate that he Respondent No. 1 PIO is directed to give the reasons as to why this commission should not impose penalty as prayed by the appellant.

ORDER

Appeal is allowed

- a) PIO is directed to furnish the information at point No. 4 and 5 as sought by the Appellant by his application dated 06/05/2014 free of cost within 3 weeks from the date of receipt of this order and report compliance to this Commission along with acknowledgment within 10 days then after.
- b) The Commission also directs the Respondent No. 1 PIO to file an affidavit to the Commission regarding time and the date of efforts made to trace the file documents and the fact of fixing responsibility missing file/documents and the action taken against the responsible staff of Deputy Collector Pernem and what relief is to be taken to be given to the Appellant.
- c) The Commission also admonishes Respondent No. 2 FAA and thereby directs to conduct the matters in accordance with law by giving sufficient opportunity to the Appellant to present his case and also directs henceforth to intimate the parties regarding the decision taken on the appeal.

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 under the Right to Information Act 2005.

Sd/-

(Ms. Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa