

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

CORAM: Smt. Pratima K. Vernekar,
State Information Commissioner.

Appeal No.45/2017

Longuinhos Fernandes,
H. No. 325, Desterro Waddo,
Near EL-Monte Theater,
Vasco-da-Gama, Goa

....Appellant

V/s

1. The Public Information Officer (PIO),
Mormugao Muncipal Council,
Mormugao, Vasco-da-gama.
 2. The First Appellate Authority (FAA),
Chief Officer, Mormugao Muncipal Council,
Mormugao, Vasco-da-gama
-Respondents

Filed on : 20/04/2017
Decided on: 1/11/2017

ORDER

1. The Appellant Shri Loguinhos Fernandes herein by his application, dated 7/9/2016 filed u/s 6(1) of The Right to Information Act, 2005 sought for all documents submitted to obtain NOC for obtaining Electricity connection by Smt. Leela M. Biradar for house No. 325 (2), situated near Elmonte, ward No. 6 Vasco-da-Gama from the Respondent No.1, PIO of Mormugao Muncipal Council.

2. The said application was replied by PIO on 6/10/2016 there by requesting appellant to submit the copy of a NOC dated 15/1/2003 in order to facilitate to issue the requested information .

3. In pursuant to the above letter of Public Information Officer (PIO), the appellant vide his letter dated 12/10/16 furnished him following NOCs :-
 - i) NOC NO. MMC/TECH/2 (i) 99-2000/880 dated 20/5/1999 for water connection issued in the name of Mrs Durgawa Reddy for House No. 252(2) in ward No. Situated at Near Rebello Bar, Major Bandar Vasco Goa.
 - (ii) NOC No. MMC/TECH/NOC/02-03/935 dated 15/1/2003 issued in the name of Smt. Leela M. Biradar for obtaining Electricity connection for House NO. 325 (2) situated near Elmonte, Vasco Da Gama in ward No. 6.

4. According to the Appellant despite of providing him the above details, the information as sought was not furnished to him, as such he filed first appeal before the Respondent No. 2 herein on 17/11/2016.

5. It is the contention of the Appellant that he did not receive any order from the Respondent No. 2 FAA.
6. According to the Appellant he received a letter dated 17/2/17 from the PIO informing him that the files pertaining to the requested information are not available in the office records and as such unable to provide the same.
7. The appellant being aggrieved by said response of Public Information Officer (PIO) and of First Appellate Authority (FAA), has landed before this Commission on 20/04/2017 in this Second appeal u/s 19(3) of the RTI 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,
8. Notices were issued to the parties, pursuant to which the appellant appeared. The Respondent No. 1 PIO, Shri Manoj Arsekar was present alongwith Advocate Pednekar.

On 13/10/2017, PIO filed a reply to the appeal.

9. In his said reply it was submitted by the PIO that the Respondent NO. 2 FAA heard the matter and issued direction to them on 16/2/2017 to furnish the details to the appellant. It is further contended that PIO has made every efforts to trace the file and since it was not traceable vide letter dated 17/02/2017 informed the appellant about the non traceable of the file .
10. After filing the reply the Respondent nor his Advocate remained present as such the Commission decided to dispose the appeal based on the available records in the file
11. I have perused the records and also considered the submissions of the parties.
12. The appellant in his submissions has contended that non availability of records is not a defense to deny the information.
13. It is the contention of PIO in his reply dated 13/10/2017 is that though the information is held by it the same is presently untraceable as it is misplaced.

14. The Respondent PIO themselves in his reply submitted that the order is passed by FAA on 16/2/2017. According to them they were directed to furnish the information. It is their contention that vide letter dated 17/02/2017 they have informed appellant regarding not traceability of the file. It appears from the above conduct that PIO without verifying the records on a next date of the order of the FAA had informed and submitted that the records are not traceable. The said reply appears to have been given in a very casual manner just as a mere empty formality. The above attitude and conduct of PIO is condemnable and is against the mandade of RTI Act.
15. The information sought pertains to the year 2003 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 and needs to be made available to the appellant.

16. In this case it is only the lapse and failure of the authority to preserve the records which has led to non traceability of the file. In this case though the public authority was aware of missing of said records no any steps have been taken for conducting the inquiry of the missing of the said records nor any FIR has been 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 RTI Act itself.
17. Considering the above position and as the file is not traced till date, , 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.
18. The Commission has observed that the PIO of Mormugao Municipal council has taken a similar stand in other RTI matters too i.e. **“ the records are not traceable/available,”**

19. An appropriate order therefore is required to be passed so that the liability is fixed and records are traced.
20. In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following :

ORDER

- a. The Director, of Municipal Administration shall conduct an inquiry regarding the said missing file and fix the responsibility for missing said file. The Director shall complete such inquiry within 3 (three) 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.
- b. A FIR against responsible person may also be filed with the police .

c. The Public authority i.e Mormugao Municipal council is hereby directed to conduct the inventory of the records and to take necessary steps to preserve the records.

Notify the parties.

Pronounced in the open court.

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