

# GOA STATE INFORMATION COMMISSION

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

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**Appeal No. 176/SCIC/2011**

Kum. Dr. Kalpana V. Kamat ,  
C/o. Vasant M. Kamat,  
1<sup>st</sup> floor, Caldeira Arcade,  
Bhute Bhat, Mestawado,  
Vasco Goa.

..... Appellant

## **V/s.**

1. Public Information Officer  
Mormugao Municipal Council,  
Vasco Goa.

2. First Appellate Authority  
Director of Municipal Administration .  
Panaji Goa.

..... Respondents

## **CORAM:**

**Smt. Pratima K. Vernekar**, State Information Commissioner

**Filed on: 17/8/2011**  
**Decided on: 01/12/2017**

## **ORDER**

1. The appellant herein Dr. Kalpana Kamat by her application dated 25/4/2011 filed u/s 6(1) of the Right to Information Act, 2005 sought certain information from the Respondent No. 1 Public Information Officer, Mormugao Municipal Council, Vasco Da Gama under 4 points as stated therein in the said application .
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 5/7/2011 before the Director of Municipal Administrators, Panajim Goa, being First appellate authority who is the Respondent No. 2 herein.
3. According to the appellant her said application filed 6(1) of RTI Act was responded by Respondent PIO on 7/7/2011.

4. According to the appellant the Respondent No. 2 by an order dated 22/7/2011 and corrigendum dated 1/8/2011 directed the Respondent PIO to furnish the said information to the appellant within 10 days from the date of issue of corrigendum free of cost .
5. According to the appellant she received only a covering letter dated 5/8/2011 from the PIO without enclosing the certified copy of the information .
6. Being aggrieved by the action of the Respondent PIO and as she did not received any certified copy of the document, Appellant preferred a present appeal on 17/8/2011 in terms of section 19(3) of RTI Act, thereby seeking directions as against respondent PIO for furnishing her correct information and for invoking penal provisions.
7. In pursuant to the notice of this commission the reply was filed by then PIO on 21//11/11 . After the appointment of his commission a fresh notices were issued to both the parties in pursuant to which appellant appeared in person and Respondent PIO represented by Advocate Shri V. Pednekar . Additional reply came to be filed by Respondent no. 1 PIO on 12/7/2017 interalia submitting that inspection was carried out by the appellant and that he made every efforts to trace the record and the information at point No. 6,7 and 9 are not available as per their office records. The Advocate for the respondent sought time to file affidavit of present PIO however despite of granting many opportunity he failed to do so .
8. When the matter was fixed for the arguments both the parties remained absent. The opportunities was grated to them to file written synopsis if any within 8 days and the matter was fixed for orders.
9. I have scrutinize the records available in the file.
10. The respondent PIO vide his reply dated 21/11/11 at para 2 have admitted as there was delay in responding / in providing the

information to the appellant. He has also not disputed that the application of the appellant was responded by him only on 7/7/2011. Apparently the said application dated 25/4/2011 filed u/s 6 was not responded within 30 days time interms of section 7(1) of RTI Act, 2005. There is a delay approximately one and half month in responding the said application.

11. From the letter Bearing No. MMC/Tech/VN/RTI/11-12/803 dated 5/8/2011 addressed to appellant by PIO and letter dated 7/7/2011 it could be safely presume that the information was then available in the records of the public authority as such PIO has directed to collect the same after making necessary of Rs. 168/-. Now during this proceedings vide their reply dated 12/7/2017 the present PIO have contended that the said information is not available as per their office records.
12. The information sought pertains to the year 2010 and the same is sought by the appellant initially in the year 2011, which is the subject matter of present appeal.
13. It is the contention of present PIO that the information is not available in their records. The then PIO after verifying the records might have intimated vide their letter dated 7/7/2011 to collect the information. Further vide letter dated 5/8/2011 they have contended the certified copies of the documents at serial No. 6,7 and 9 have been purportedly enclosed ,as such I failed to understand the stand taken by the present PIO as "information not available in their records" when the then PIO had already directed the appellant to collect the information. 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 that ground of " non availability of records " is not qualified to be exempted u/s 8 of the RTI act .

- 14 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 ".

15. 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. Issue Show cause notice to Then PIO Meghnath P. Parab calling upon him to explain why penalty should not be imposed on him for not responding the application within stipulated time and for delaying information as contemplated u/s 20(1) of the RTI Act 2005, returnable on 22/12/2017at 3.30 pm.
2. Issue Show cause notice to public authority/ Mormugao Municipal, council, Vasco Dagama to showcause. As to why it should not be order to compensate the appellant as contemplated u/s 19(8)(b) of the RTI Act.
3. The Director of Municipal Administration, Panajim, Goa or through his representative shall conduct an inquiry regarding the said missing documents and fix the responsibility for missing said file/documents. And shall complete such inquiry within 4 months from the date of receipt of this order by him. The Director of Municipal Administration 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.
4. The Public authority/ Mormugao Municipal Council ,Vasco ,Da Gama concerned herein also shall carry out the inventory of their records with 3 months and are hereby directed to preserve the records properly.
5. The Public authority may also appoint Records officer for the purpose of maintaining and preserving the official records.

With the above directions , the appeal proceedings stands closed

Notify the parties.

Pronounced in the open court.

Sd/-

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

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