

GOA STATE INFORMATION COMMISSION

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

**Shri Prashant S.P. Tendolkar, State Chief
Information Commissioner,**

Appeal No. 53/SCIC/2016

Shri Joao C. Pereira,
H. No.40, Acsona,
Utorda, Majorda, Salcete-Goa. Appellant.

V/s

- 1) The Public Information Officer/SDPO,
Margao –Goa.
- 2) The First Appellate Authority/
Supt. of Police (S),
Margao-Goa. Respondents.

Filed on: 22/03/2016

Disposed on: 05/06/2017

a) The appellant herein by his application, dated 09/09/2015 filed u/s 6(1) of the Right to Information Act 2005(Act) sought inspection of inquiry file pertaining to FIR No.59/2015.

b) The said application was replied on 26/09/2015, by which only a part of the inspection of was allowed and remaining part was refused u/s 8 (1) (h) of the act. According to appellant the information as sought was not furnished and hence the appellant filed first appeal to the Respondent No.2.

c) The First Appellate Authority (FAA) by order, dated 14/12/2015 upheld the reply of PIO. According to appellant, said order is contrary to the order which was orally passed on 04/12/2015. The appellant therefore has approached this Commission in second appeal u/s 19(3) of the act.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 11/04/2017 filed his affidavit in reply to the

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appeal. Vide said reply it is the contention of PIO that as the information was pertaining to Colva Police Station request of appellant was referred to said Police station and by letter, dated 28/09/2015, called upon appellant to take inspection pertaining to FIR copy and station diary and request for inspection of rest of document was rejected u/s 8(1) (h) of act.

It is, further according to PIO that appellant did not approach for inspection but preferred first appeal before S. P. South Goa, before whom PIO filed his reply and the First appellate Authority disposed the appeal.

PIO has further averred that thereafter it was revealed that Shri Yogesh Sawant, PSI, who was the Investigation Officer (IO) has reported that he has misplaced the case papers and hence could not hand over the same to Colva Police station and that the said fact is reported to superior and hence the inspection cannot be given to the appellant.

PIO has further affirmed that he has received information from Colva Police Station that FIR in Cr. No.42/17 is registered against said Shri Yogesh Sawant and Shri Satish Gaude PI of Colva Police station is investigating the matter.

With above reply PIO has submitted that inspection of records could not be given in view of above reason and that no liability can be fastened to PIO.

f) Arguments were heard. Adv. K. L. Bhagat, appearing on behalf of PIO by reiterating the averments contained in reply submitted that initially inspection was offered, but the appellant did not avail the opportunity. According to him, the information that the file is missing was received only after first appeal, when second opportunity was to be offered.

The appellant in his arguments submitted that the missing of the file was caused deliberately and it was purposely misplaced right from the beginning, to avoid dispensation of information. According to him it is only after notice issued by this Commission that it is reported as missing and FIR is recorded.

2) **FINDINGS**

a) I have perused the application filed u/s 6(1) of the act filed by the appellant as also the response of PIO. Considering the rival contentions, the undisputed fact is that the concerned file, from which the information is sought is missing. Though it is the contention of appellant that it was not available from the first date itself, the fact remains that for want of concerned file the information cannot be dispensed to the appellant. Hence any order directing the PIO to furnish any information, in response to the appellant's application, would be redundant. Such an order would be effective only after the file is traced.

b) In the aforesaid circumstances it would be appropriate to direct the PIO, in turn to direct the office investigating the misplacement of the file, to complete the investigation as expeditiously as possible and file a copy of the report to this Commission under intimation to the appellant and thereafter deal with the application of the appellant dated 09/09/2015 filed u/s 6 (1) of the act.

c) Considering the above I proceed to dispose the present appeal with the following:

O R D E R

PIO shall direct the investigating officer of Crime No.42/2017, of Colva Police Station, to complete the investigation of the said case as expeditiously as possible. On completion of said investigation the PIO shall file a report thereof to this Commission, under intimation to the appellant.

After conclusion of the said investigation, the PIO shall deal with the appellants application u/s 6(1) dated 09/09/2015, in accordance with the provisions of the Right to information Act 2005.

Appeal stands disposed. Right of appellant to approach the forum under the act, if aggrieved by any order of the PIO, are kept open.

Notify the parties.

Pronounced in open proceedings.

Sd/-
(Mr. Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa

