

GOA STATE INFORMATION COMMISSION

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

Penalty.60/ 2016
In Appeal No.53/SIC/2015

Shri Mithun S. Naik @Bhaje,
R/o H.No. 28,
Vadachawada, Sirigao,
Bicholem Goa.

..... Appellant

V/s.

1.The Public Information Officer,(PIO)
Office of the Executive Engineer,
DIV.XXIV(PEH) PWD,
Bicholim Goa.

.....Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on:27/02/2017

ORDER

1. While disposing the appeal, by order dated 29/12/2016, this commission directed the then PIO Shri K. Gopalan Executive Engineer to showcause as to why action is contemplated u/s 20(1) and /or 20(2) and u/s 19(8)(b) of the Right to Information Act 2005, should not be initiated against him.
2. During hearing on 01/02/2017 the appellant as well as Respondent No. 1 PIO Shri K. Gopalan was present Respondent No. 1 PIO Shri K. Gopalan filed his reply. Argument of the appellant as well as Respondent heard.
3. Appellant submitted that great hardship and mental agony has been caused to him in securing the said information. It is further contention that though he had filed his application in the year 2014 the information is came to be furnished to him only in the year 2016 and on account of such delay irreparable loss have been caused to him. Appellant then prayed for the heavy cost to be imposed on then PIO for dereliction on his duties.

..2..

4. Respondent PIO submitted that APIO has informed him that the said file is not traceable as such he could not transmit the information to the applicant. It is his further contention that he has not been provided sufficient guidance or support in terms of training and staff on dealing with RTI and other matters. He prayed for a lenient view and he submitted that henceforth he will be diligent with RTI matters and undertook to be vigilant in the future. He also submitted that he is due for retirement from services in November 2017.
5. It is seen from the records that an application u/s 6(1) of the RTI Act was made on 26/11/14 which was replied on 8/1/15. The said application was not responded to within the stipulated time as contemplated under the Act. Further it is seen from the records that the order of the First appellate authority dated 24/2/2015 was not complied with by Respondent No. 1 PIO within 20 days. In other words even after the order of the First appellate authority the PIO had failed to furnish to the appellant the required information.
6. The short point to be decided is whether as per section 20(1) the PIO has discharged the burden of proving that he has acted reasonably and diligently in dealing with the application under section 6(1) of the Act.
7. The PIO in his reply to the notice issued in these proceedings and also in the course of the argument has given several reasons for not furnishing the information. He has not relied upon any document to substantiate that the Asst. Public Information Officer has furnished him information after the period of 30 days. He has also not substantiated what efforts were made by him to trace the file and to issue the desired document within 20 days free of cost to the appellant.
8. During the course of the present proceedings sufficient time was also given by the Commission to the present PIOs to trace the file

..3/-

PIO Shri R. Barreto during appeal proceeding submitted that after due search of file the said file was traced from the Pump house where the old records were stocked. From his said statement one could gather the public authority was not serious enough in preserving the old records in proper form and at proper place. The public authority should be considered that the main purpose of RTI act to facilitate to information seeker to get the information is not defeated by such kind of excuses.

9. A mere claim that the file is missing has no legality as it was not recognized as exception under the RTI Act. If the file or the document is not traceable, it reflects the inefficient and the pathetic management of the Public authority. The public authority has a duty to initiate action for this kind of loss of public records in the form of "information not traceable or missing". The public authority has also a duty to designate an officer as "**record officer**" and to protect the records.
10. The Hon'ble High court of Delhi in W.P. No. (C) 3660/2012 & CM 7664/2012 (stay), Union of India V/s Vishwas Bhamburkar, with regards to 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 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.

..4..

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.

..5/-

..5..

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 infact 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 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”.

11. Considering the observation made by the Supreme Court I find that in a present case the public authority have not stored or preserved the records in proper manner thereby causing great hardship to the appellant. Public authority must be introspect that non furnishing the information or furnishing the incomplete and incorrect information land to citizen before the first appellate authority and

..6/-

before this commission resulting into unnecessary harassment of a common man which is socially abhorring and legally impermissible therefore such of compensation help in caring the social brief.

12. In the present case the documents were found at the pump house and obviously the pump house is not an ideal place to preserve the records. It appears that public authority is not very serious in preserving the records. Public authority ought to have duly maintained and preserved the records in the office premises or close vicinity so that PIO could easily locate the same. In above circumstances I hold that public authority was negligent in their duties and as such for the fault of public authority the PIO cannot be held to be responsible.
13. The then PIO has contravened section 7(1) r/w section 18(1)(C) of the Act by not responding to the request for information thereby making liable for penalty u/s 20(1) of the Act. However considering the undertaking given by him in his reply, and also till date it has not been shown that such lapses are persistent, a lenient view is taken in the present case. And as such I do not find any ground involving section 20(2) of the RTI Act.

I therefore disposed the penalty proceedings with the following directions.

ORDER

1. The public authority office of the PWD, Bicholim, Goa is hereby directed to pay a compensation of Rs. 5,000/- to the complainant in pursuing his RTI application, for loss, mental agony and detriment suffered, within 1 month from the date of the receipt of this order.

..7..

2. The PIO K. Gopalan have been directed to be vigilant hence forth while dealing with the matters pertains to RTI and any future lapses on his part will be viewed seriously,
3. The copy of this order to be sent to the Chief Executive Officer, Head office of PWD, Altinho for information and for issuing the necessary direction to his subordinates for preserving the records in proper manner and at proper place and for appointment of record officers for preservations of the records in proper form.

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 against this order under the Right to Information Act 2005.

Pronounced in the open court.

Sd/-

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