

**GOA STATE INFORMATION COMMISSION**

Kamat Tower, Seventh Floor, Patto Panaji-Goa

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

**Penalty 44/2014**  
**In Appeal No. 07/SIC/2014**

Shri. Peter Paul D'Souza,  
R/o. H. No. 63/2, Mainath Bhatti Vaddo,  
Arpora, Bardez-Goa ....Complainant/Appellant

V/s

Shri Rui Cardozo,  
Village Panchayat Secretary (Arpora)/  
Public Information Officer,  
Village Panchayat of Arpora,  
Arpora, Bardez-Goa ....Opponent/Respondent

**Disposed on: 7/02/2017**

**ORDER**

1. The Appellant Peter Paul D'souza by his application dated 12/08/2013 filed u/s 6(1) of Right to Information Act 2005 sought information from Respondent No. 1 Public Information Officer (PIO) Village Panchayat of Arpora Nagao- Goa under 2 points as stated therein in the said application. The said application was responded to by PIO on 11/09/2013 thereby denying the information on the ground that it was subjudice before Additional Director of Panchayat-I. As such deeming the same as refusal, appellant filed 1<sup>st</sup> appeal to the BDO being the First Appellate Authority (FAA).
2. The Respondent No. 2 FAA by order dated 2/12/2013, allowed the said appeal and directed PIO to furnish the information sought by the appellant vide his application dated 12/08/2013 within 15 days from the date of disposal of the appeal. In the said order the Respondent No. 2 FAA had observed that the information sought was not covered under section 8, 9, and 11 of Right To Information

Act and as such has held that the refusal on the part of the PIO was unjustified. It is further observed by the FAA that the PIO have not substantiated that the disclosure of the said information would affect the outcome of appeal pending before Director of Panchayat, Panjim and have not clearly come out with the case whether or not information as sought by appellant was held by them.

3. Since despite of order of FAA since the information was not furnished to him the appellant landed before this Commission by way of 2<sup>nd</sup> appeal under section 19(3) of RTI Act on 27/01/2014 prays for direction as against Respondent PIO to furnish him information at earliest and for invoking penalty provisions.
4. Notice were issued to party by my predecessor in Appeal No. 7/SIC/2014 pursuant to which the appellant appeared and on behalf of Respondent PIO Shri Rui Cardoso appeared on 07/11/2014.
5. The roznama dated 7/11/2014 reveals that since the PIO orally confirmed before my predecessor that he has not bothered to take any steps after receiving direction from FAA, a separate penalty case was started against him along with present appeal No. 7/SIC/2014. Which was registered as Penalty 44/2014.
6. After appointment of this Commission, a fresh notices were issued to both the parties. In pursuant to the notice appellant appeared in person and on behalf of Respondent PIO, Rui Cardozo, Adv Rameshwari Morajkar alongwith Advocate Priyanka Korgaokar appeared and filed reply on behalf of Respondent PIO on 4/01/2017 interalia submitting that sincere efforts were put by PIO to trace out the information sought by the Appellant but same is not found in their possession.
7. Arguments were advanced by the appellant as well as Advocate Priyanka Korgaonkar on behalf of Respondent No. 1, PIO.
8. The Appellant by reiterating the facts submitted that inspite of the order of FAA the Respondent PIO had the audacity to inform him that the information cannot be given which has resulted in defiance of the order of FAA.
9. I have perused the record and considered arguments

10. From the letter dated 11/09/2013 from the Respondent the information was denied being subjudice before the Additional Director of Panchayat-I. It is nowhere the case of the PIO that information was not available with them. In other words in the initial reply it was their contention that document was exempted from disclosure. From their own reply itself one could gather the information which was sought was in the custody of the public authority. The record of the public authority are public in nature and they cannot have secrecy. The Respondent herein is also not institution as specified under section 24 of the Act and hence the Respondent cannot claim any immunity against the disclosure.
11. Thus by holding that the same cannot be exempted from disclosure. I proceed to consider the contention regarding as also non compliance of the order of FAA . In the first appeal the Respondent PIO remain present and made all the submission available to him. The contention of the PIO that the information sought is basically in respect of the reply filed by the Panchayat before Additional Director of Panchayat and the grievance in relation to the submission or the contention raised in the said reply has to be dealt within the said matter and it would not be appropriate to give any clarification in the form of information was against the mandate of RTI Act.
12. After the first appeal was filed the Respondent PIO was directed to furnish the information and he was not directed to give decision. Hence the PIO after the order of FAA had no jurisdiction or power or authority to go back and pass fresh decision. The order of FAA was mandatory in nature and required only compliance thereof inspite of the same the PIO has assumed jurisdiction under section 7 which was uncalled. Once the order is passed by the higher authority what remains to be done by the PIO is only compliance thereof. The PIO from 2/12/2013 till 4/01/2017 have not furnished the information to the Appellant. Only during the reply to the showcause notice they have come up with the case that the information sought by the Appellant is not found in their possession. The same stand taken by them appeared to be belatedly and after thought. The conduct of PIO in this circumstances does not appear to be fair. The PIO has not filed any affidavit substantiating what efforts were taken by them in

tracing out the information. The information which has no protection under section 8 of the Act as mentioned above has to be furnished.

13. From the conduct of the PIO, it can be clearly inferred that PIO have no concern to his obligation under the RTI Act. It is also clear that PIO has no respect to abide by order passed by his senior.
14. The PIO plays vital role in entire process of parting information under the Act. The PIO should always keep in mind the objective for which the said act came into existence. RTI Act main objective is to bring transparency and accountability. PIO is duty bound to implement the Act in true spirit. From the perusal of the said order of FAA one could gather that the Respondent PIO was also present before the FAA. The order of the FAA also reveals that case was heard on merit.
15. It is seen from the records that the appellant was seeking the information in respect of the reply filed by the Respondent on 11/07/2013 in the Appeal No. ADP-I/P.A.49/2013 before the Additional Director of Panchayat-I in respect of paras 7 to 32, wherein the Respondent PIO has solemnly affirmed that whatever stated by them at para 7 to 32 are based on the record available in the Village Panchayat of Nagao Goa. As such, it was the abundant duty of the PIO to furnish the information since it was based on the records. Unless proved that record are destroyed as per the prescribed rules of the destruction/retention policy, it is deemed that records continued to be held by the Public Authority.
16. The Hon'ble High Court of Delhi at New Delhi in writ petition No. 3660/2012 and CM 7664/2012 (stay) in case of Union of India V/s Vishwas Bhamburkar which was decided on 13/09/2013 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.*

*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 be 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."*

17. The Appellant in the present appeal has also prayed for directing Respondent a sum of Rs. 250/- per day for causing delay in furnishing the information. Appellant has also asked for disciplinary action for malfidely denying/ obstructing the information.
18. Refusing to obey the order of Senior Officer had raised doubt that the denial of the information to be malafide.
19. It is the duty of Public Authority to find out the alternative, if the file is not traced even after thorough search and to provide necessary relief to the appellant who is seeking information.

The Commission therefore directs the PIO to file an affidavit to the commission, regarding the time and date of efforts made to trace the file /documents and , fact of fixing responsibility of missing file and the action taken against the responsible staff of

Village Panchayat of Arpora and what relief is proposed to be given to the appellant etc .

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 RTI Act to facilitate to information seeker to get the information is not defeated by such kind of excuses.

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

In the above circumstances further order is passed.

### **ORDER**

Appeal is allowed.

- a) PIO is directed to furnish the Appellant the entire complete and correct information as sought by the Appellant by his application dated 12/08/2013 free of cost within 3 weeks from the date of receipt of this order and report compliance to this Commission alongwith acknowledgement of the Appellant to this Commission within 10 days thereafter.
- b) Issue notice to Respondent PIO showing cause why he should not be made to compensate Appellant for the inconvenience, hardship and mental agony caused by him.
- c) Issue notice to PIO to show cause why penalty and disciplinary proceeding should not be initiated against him for his dereliction of duties
- d) Respondent PIO is hereby directed to remain present before this Commission alongwith written submission on 8/03/2017 at 3.30. p.m., showing why penalty/ compensation should not be imposed on him. If no reply is filed by the Respondent, PIO it shall be deemed that he has no explanation to offer and further orders as may be deemed fit shall be passed.
- e) In case the PIO at the relevant time, to whom the present notice is issued, is transferred, the present PIO shall serve this notice alongwith the order to him and produce the acknowledgement

before the Commission on or before the next date fixed in the matter alongwith the full name and present address of the then PIO.

With the direction the appeal stands disposed .

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