

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 10/2018

Shri Gabriel Rebelo,
Power of Attorney Holder of
Mr. Antonio Dias,
H.No.314-A,
Pulamoll, Sao Jose De Areal,
Salcete Goa.

.....Appellant

v/s

1. The Deputy Collector and SDO,
Mathany Saldana Administrative Complex,
Margao Goa.
2. The Additional Collector-I,
First Appellate Authority,
South Goa District, Margao ,
Mathany Saldana Administrative Complex,
Margao Goa .

.....Respondent .

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 15/1/2018

Decided on:26/2/2018

ORDER

1. The brief facts leading to present appeal are that the appellant, Shri Gabriel Rebelo by his application, which was inwards in the office of Respondent on 1/9/17 , filed u/s 6(1) of The Right to Information Act , 2005 sought from Public Information Officer of the office of deputy collector , Margao , a certified copy of the memo bearing No. LRC/RTS/PART/Prom/92/779 dated 21/2/1992 where by survey No.216/4 of village St. Jose De areal, Salcete Taluka has been purportedly promulgated. The appellant along with the said application also annexed a copy of the certificate issued by sub-divisional Officer , Margao .
2. The said application was responded by Respondent No.1 PIO herein on 29/9/2017 interalia informing appellant that the

concerned file bearing No. LRC/RTS/PART/Prom/92/779 cannot be located and all the efforts are being made to trace the same and if the file is found , the appellant shall be informed accordingly .

3. As the information as sought was not furnished , the appellant filed first appeal to the respondent No.2 Additional Collector –I, Margao being the first appellate authority on 16/10/17 .
4. The Respondent No. 2 FAA by order, dated 24/11/17 disposed the said appeal thereby giving directions to the PIO to furnish the information to the appellant free of cost within a period of seven days from the receipt of the order .
5. The Respondent PIO, after the order of FAA again vide his letter 28/12/17 informed the appellant that the concerned file bearing No. LRC/RTS/PART/Prom/92/779 is not traceable in their office records and as such he cannot issue him certify copy of the same.
6. In the above background the appellant being aggrieved by said response of PIO, has approached this commission in this second appeal u/s 19(3) of the act on 15/1/2018 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.
7. Notices were issued to the parties, pursuant to which appellant was present in person .Respondent no. 1 PIO was represented by APIO Shri Nitin Dhawaskar. Respondent No. 2 represented by Bhiku Gawas.
8. No reply filed by Respondent PIO despite of granting opportunities as such this commission had to decide the matter based on the available records in the file.
9. I have perused the records and also considered the submissions of the Appellant.

10. Appellant contended that his name has been deleted from the land records as such he had sought said information in order to approach competent forum. It is the contention of the appellant that Respondent have not conducted inquiry and fixed responsibility on a concerned person for a missing files.
11. It is the contention of PIO as submitted in his reply u/s 7 , dated 29/9/2017 and vide letter dated 28/1/2017 in the compliance of order of first appellate authority that the records are missing and not traceable. 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 . Besides that mere claim of "non availability of records" has no legality as it is not recognized as exception under the RTI Act. If the file/documents are really not traceable, it reflects the inefficient and pathetic management of the public authority.
12. 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 .
13. It is quite oblivious that appellant has suffered lots of harassment and mental agony in seeking the information and pursuing the matter before different authorities
14. The Honble High court of Delhi in writ petition (c) 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 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 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.
16. There is no cogent and convincing evidence on record against PIO for invoking penal provision, however the facts of the case warrants compensation to be awarded to appellant by public authority. Since appellant have graciously waved the same, the same is not ordered to be granted.

In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following:

ORDER

- a) The collector of south District or through his representative shall conduct an inquiry within four months regarding the said missing files/documents and fix the responsibility for missing

said file. The Collector of south Goa District 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) The Public authority concerned herein also shall carry out the inventory of their records within 5 months and are hereby directed to preserve the records properly.
- c) 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.

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.

Sd/-

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

Ak/-

