

**GOA STATE INFORMATION COMMISSION**  
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

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**Second Appeal No. 182/2018/SIC-I**

Narsinha Rathwad @ Kakankar,  
R/o. H. No. 101/12, Kasarwada, Khorlim,  
Mapusa, Bardez, Goa.

..... **Appellant**

**V/s**

- 1) Public Information Officer,  
Mamlatdar of Bardez,  
Mapusa, Goa.
- 2) First Appellate Authority,  
The Dy. Collector and SDO,  
Mapusa-Goa

..... **Respondents**

**CORAM:**

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

**Filed on: 26/07/2018**

**Decided on: 10/09/2018**

**ORDER**

1. Brief facts leading to the present appeal are that the appellant Shri Narsinha Rathwad @ Kakankar herein by his application dated 11/04/2018 sought documents /complete file of tenancy case no. TNC/PUR/MAP/5/93 having the cause title Shri Mahadev S. Korgaonkar V/s Mrs. Filomena Braganza and Others pertaining to the property bearing P.T Sheet No. 139 of Chalta No. 62/12 of City Survey Mapusa. The said information was sought from the PIO of the Office of Mamlatdar of Bardez-Mapusa who is Respondent no. 1 herein in exercise of his right under section 6(1) of RTI Act, 2005.
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 21/05/2018 before the Respondent No. 2 Dy. Collector and SDO of Mapusa-Bardez-Goa being First appellate authority which was registered vide No. 22/32-NR/2018/F.A.A/RTI.
3. According to the appellant the PIO filed his reply on 26/06/2018 before Respondent No.2 First appellate authority stating that the

information is not available and as soon as the same is traced, it will be furnished to the Appellant.

4. According to the appellant Respondent No. 2 first appellate authority despite of conducting the hearing of the first appeal, failed to pass any order and failed to dispose the first appeal within stipulated time as contemplated u/s 19(1) of RTI Act, 2005 and as he did not received any information, as such he being aggrieved by the action of the both the Respondents is forced to prefer the present appeal.
5. In this background the appellant has preferred a present appeal on 17/6/2018 in terms of section 19(3) of RTI Act, thereby seeking directions as against respondent PIO for furnishing him correct information and for invoking penal provisions.
6. In pursuant to the notice of this commission the appellant was present in person. Respondent No. 1 PIO was represented by Shri Ashok Naik and Respondent NO. 2 first appellate authority opted to remain absent .
7. Affidavit in reply filed by Respondent No. 1 PIO on 10/9/2018. As Respondent No. 2 first appellate authority failed to appear and file any reply, I presume and hold that the averments made in the memo of appeal are not disputed by Respondent No.2 first appellate authority herein.
8. Arguments were advanced by the parties .
9. The appellant submitted that the said information was required by him on urgent basis as he wanted to produce the same in legal proceedings. He further submitted that he has sought the said information some were in April 2018 and till date the same is not furnished to him .
10. He further submitted that he had earlier on 27/04/2017 sought before the Respondent no. 1 PIO some other information pertaining to same file i.e tenancy case bearing no. TNC/UR/MAP/5/93, and

he had also preferred first appeal bearing no. 22/49/NR/2017-18/FAA/RTI before the Respondent No. 2 first appellate authority pertaining his earlier RTI Application dated 27/4/2017 and the Respondent No. 2 first appellate authority herein vide order dated 5/07/2017 had directed the Respondent No. 1 PIO to trace out the records of the said tenancy case and to issue him the information free of cost within 7 days.

11. It is contention of the appellant that in pursuant to the order dated 5/07/2017 passed in case no. 22/49/NR/2017-18/FAA/RTI/1758, he received letter from the Respondent No. 1 PIO bearing No. MAM/BAR/RTI/415/17/3496 dated 07/08/2017 informing him the file is not traceable and in support of his above contention he relied upon the order dated 5/07/2017 and the reply filed by the PIO on 7/08/2017 in his other RTI application pertaining to the same subject matter.
12. He further submitted that lots of hardship has been caused to him in pursuing his said applications before different authorities and he has been made to run from pillar to post in pursuing the same twice and till date it is reported that the said file is not traced.
13. I have scrutinize the records available in the file. And also considered submission of the parties .
14. Apparently the said application dated 11/04/2018 filed u/s 6 was not responded within 30 days time interms of section 7(1) of RTI Act, 2005 by the PIO. Assuming for a while that PIO could not respond and furnish the information because of the non traceability of the records , however the PIO was duty bound to inform the said fact to the appellant at the initial stage itself. The PIO must introspect for non furnishing of the correct information land the citizen/information seeker before the FAA and also before the commission resulting into unnecessary harassment of a common men which is socially abhorring and legally impermissible.

15. As per the letters dated 1/6/2017, 7/08/2017 and the reply dated 26/06/2018 filed by the PIO before respondent no. 2 first appellate authority in case no. 22/32-NR/2018/F.A.A./RTI, it is the contention of PIO that the information is not available/not traceable in their records, and as soon as the information is traced it will be furnished to the appellant.
16. The present PIO vide his affidavit in reply dated 10/9/2018 have also affirmed the said facts and contended that the RTI application dated 11/4/2018 of the appellant was immediately forwarded to all Mamlatdar Courts and that they have replied that the said information is not available in their records. He had supported his contention by enclosing the letters of respective Mamlatdars. He further contended that he had taken all efforts to sought out the information and even brought to the notice of First appellate authority vide their reply dated 28/6/2018 the said fact.
17. In the Nutshell it is the contention of the PIO that since 2017 till date, that the said tendency case bearing No TNC/PUR/MAP/5/93 is not available in their office records. 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 the ground of "non availability of records "is not qualified to be exempted u/s 8 of the RTI act.
- 16 The Hon'ble 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 “.

17. 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.
18. The displeasure is hereby shown on the conduct of the Respondent No. 2 first appellate authority. The records shows that even though the first appeal was filed before Respondent No. 2, first appellate authority the same was not taken up for hearing . The said act on the part of respondent No.2 first appellate authority is in contravention against the RTI Act. The said act came into existence to provide fast relief and as such time limit is fixed under the said act to dispose the application u/s 6(1) of the RTI Act within 30 days and to dispose the first appeal maximum within 45 days. The Act on the part in Respondent No. 2 First appellate authority is herein condemnable.

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 North Goa District at Panjim, Goa or through his authorized officer shall conduct an inquiry regarding the said missing of file bearing tenancy case no. TNC/PUR/MAP/5/93 having the cause title Shri Mahadev S. Korgaonkar V/s Philomena Braganza and others pertaining to the property bearing P.T Sheheet No. 139 of Chalta No. 62/12 of City Survey Mapusa and to fix the responsibility for missing said file/documents. He shall complete such inquiry within 4 months from the date of receipt of this order by him. The Collector of North Goa District at Panjim 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. Both the Respondents is hereby directed to be vigilant henceforth while dealing with the RTI matter and to strictly comply with the provisions of the RTI Act 2005. Any lapses on the part of the First appellate authority in future will be viewed seriously.
- c. The Public authority concerned herein also shall carry out the inventory of their records within 3 months and are hereby directed to maintain and preserve the records properly.
- d. The Public authority may also appoint Records Officer for the purpose of maintaining and preserving the official records.
- e. In excise of my powers conferred u/s 25(5) of RTI Act 2005 this Commission recommends that the Collector of North

Goa District at Panjim shall issue instruction to both the respondents to deal with the RTI matters appropriately in accordance with the provisions of the RTI Act and any lapses on the part of respondents be considered as dereliction of duties.

- f. The copy of the order shall be sent to Collector of North Goa District at Panjim for information and for appropriate action.

With the above directions, the appeal proceedings stands closed .

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