

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

Second Appeal No. 199/2018/SIC-I

Shri Jawaharlal T. Shetye
H.N. 35/A, Ward No, 11,,
Near Sateri Temple, Khorlim,
Mapusa-Goa-403 507.

..... Appellant

V/s

- 1) The Public Information Officer,
Mapusa Muncipal Council,
Mapusa-Goa – 403507.
- 2) First Appellate Authority,
Chief Officer, Mapusa Muncipal Council,
Mapusa-Goa.403507

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 24/08/2018

Decided on: 15/10/2018

ORDER

1. Brief facts leading to the present appeal are that the appellant Shri Jawaharlal T. Shetye herein by his application dated 21/5/2018 sought certain information on five points pertaining to the certificate of income bearing No. EST/6014/14 dated 1/8/2014 issued by the Chief Officer of Mapusa Municipal Council at the request of Shri Sudhir Kandolkar based on the affidavit dated 30/7/2014 filed by Said Sudhir Kandolkar. The said information was sought from the PIO of the Office of Mapusa Municipal Council at Mapusa- Bardez who is Respondent no. 1 herein in exercise of his right under section 6(1) of RTI Act, 2005. The copy of the certificate of income dated 1/8/2014 issued by the Chief Officer of Mapusa Municipal council was also enclosed to the said application.
2. It is the contention of the appellant that his above application filed in sub-section 1 of section 6 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 22/06/2018 before the Chief Officer of Mapusa Municipal council who is the Respondent No. 2 herein being First appellate authority in terms of section 19(1) of RTI Act, 2005.

3. It is the contention of the appellant that the Respondent No. 2 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.
4. In this background the appellant has preferred a present appeal on 24/8/2018 as contemplated u/s 19(3) of RTI Act, thereby seeking directions as against respondent PIO for furnishing him correct information and for invoking penal provisions.
5. In pursuant to the notice of this commission the appellant as well as Respondent NO. 2 first appellate authority opted to remain absent Respondent No. 1 PIO Shri Venketesh Sawant was present along with Advocate Matlock D'Souza .
6. Reply filed by Respondent No. 1 PIO on 15/10/2018. 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. The copy of the reply of PIO alongwith enclosures could not be furnished to appellant on account of his continuous absence.
7. Arguments on Behalf of Respondent PIO were advanced by Advocate M. D'Souza.
8. I have scrutinize the records available in the file. And also considered submission made on behalf of Respondent No. 1 PIO by Advocate M. D'Souza .

9. The Respondent PIO vide his reply dated 15/10/2018 have contended that the appellant is a chronic litigant and have been filing time an against RTI application and appeals with sinister motive of hampering the functioning of municipality and the PIO. The Respondent PIO further contended that the appellant has been abusing the system and has rather targeting the process of RTIs by keeping on filing the various RTI against the Mapusa Municipal council. In support of his above contention he placed on records the list of applications filed by the appellant from January 2018 till June 2018 which are amounting 201 applications and appeals.
10. It was further contended that the then PIO Shri Shivram Vaze has supplied the information to the appellant vide letter bearing No. EST/RTI /5309/2018 dated 31/7/2018 and it support its contention he relied upon his letter alongwith enclosure
11. The Respondent PIO vide his reply dated 15/10/2018 have contended that the appellant Shri Shivram Vaze was officiating as PIO on the day of filing of the application dated 21/5/2018 by the appellant and he has been retired from the services on superannuation and in the support of his contention he relied upon the relieving order of the then PIO Shri Shivram Vaze.
12. The present PIO vide his reply further contended that on receipt of the memo of appeal and the notice of this commission, he forwarded the RTI application dated 21/5/2018 of the appellant immediately to the concern dealing hand/section and that they have replied that the said information is not available in their records and the said file is misplaced/lost. The PIO supported his said contention by enclosing the office note of Head clerk Smt. Nazira Sayad. He further contended that he had taken all efforts to sought out the information and tried to trace the said file for the purpose of furnishing the said information to the appellant .

13. In the Nutshell it is the contention of the present PIO that till date, that the said file 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.

14. 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 ".

15. 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.

16. Apparently the said application dated 21/5/2018 filed u/s 6 was not responded within 30 days time interms of section 7(1) of RTI Act, 2005 by the then PIO Shri Shivram Vaze. 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.
17. In the present case undisputedly the then Respondent No.1 Shri Shivram Vaze has retired as such as per today he is entitle for pension. Section 11 of pension act 1871, and section 60 (1) (g) of Civil Procedure Court grant immunity to the pension holder against its attachment. The Apex court in case of Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra in Appeal (Civil) 1874 of 1999 and also in civil appeal No. 6440-41 of 2008, Radhe Shyam Gupta v/s Punjab National Bank has also given finding that retired benefits such pension and gratuity etc does not loose their character and continued to recognized by the proviso (g) of section 60(1) of the code of civil procedure. Under this circumstances the Commission is neither empowered to order a deduction from his pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded.
18. The displeasure is hereby expressed by this commission on the conduct and the attitude of the Respondent No. 2 First Appellate Authority (FAA). The Records shows that even though the First appeal was filed by appellant the same was not disposed by the FAA

within a period of 45 days. The respondent No. 2 First appellate authority despite of due service of notice did not bother to appear before this commission neither any reply was filed by him. It is seen from the past records that the Respondent no. 2 first appellate authority have acted in similar manner and fashion showing scant respect to the provisions of the RTI Act and also to the commission. Unfortunately there are no any penal provisions against the first appellate authority under the RTI Act for non compliance of the provisions. However such repeated attitude on the part of the first appellate authority cannot be taken lightly and has to be brought to the notice of his superiors

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

ORDER

- a. The Director of Municipal Administration at Panajim , Goa or through his authorized officer shall conduct an inquiry regarding the said missing of file /documents concerning the issue of issuing certificate of income dated 1/8/2014 to Shri Sudhir R. Kandolkar by the Chief Officer of Mapusa Municipal Council 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 Director of Municipal Administration at Panajim shall also initiate appropriate proceedings against the person responsible as per his/ her service condition and the right of the appellant to seek the same information from the PIO free of cost is kept open, in case the said file is traced.
- b. 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.

- c. The Public authority may also appoint Records officer for the purpose of maintaining and preserving the official records.
- d. In exercise of my powers conferred u/s 25(5) of RTI Act 2005 this Commission recommends that the Director of Municipal Administration at Panajim 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.
- e. The copy of the order shall be sent to The Director of Municipal Administration at Panajim 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