

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 59/2018/SIC-I

Shri Nixon Furtado,
House No. 51, Copelwaddo,
Sernabatim, Salcete-Goa.

.....Appellant.

V/s

1. Public Information Officer,
O/o. the Sub-Divisional Police Officer,
Margao-Goa.

2. The First Appellate Authority (FAA),
Office of the Superintendent of Police,
South Goa, Margao-Goa.

3. The Public Information Officer (PIO),
District and Session Court,
Margao-Goa

.....Respondents

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

Filed on: 12/03/2018

Decided on: 25/04/2018

ORDER

1. The brief facts leading to present appeal are that the appellant Shri Nixon Furtado by his application, dated 8/10/2017, filed u/s 6(1) of The Right to Information Act, 2005 sought certified copies of coloured photographs of the site inspection/Panchanama which the Public Information Officer (PIO) vide letter dated 2/12/2010 have provided him the black and white Xerox copies of the same. The said information was sought from the Respondent No. 1 PIO of the Office of Deputy Superintendent of Police, Margao-Goa.
2. It is the contention of the appellant that he received letter dated 19/10/2017 from Respondent No. 1 PIO interalia informing him that FIR. No. 117/09 dated 6/08/2009 and final report bearing No. 24/2017 dated 24/06/2017 has been submitted to JMFC Court, Margao along with original case paper for the grant of the same as per records furnished by APIO/ PI of Colva Police Station.

3. As the information as sought was not furnished, the appellant filed first appeal to the Respondent No. 2 being the first Appellate Authority, Superintendent of Police, South Goa, Margao on 6/11/2017.
4. It is the contention of the appellant that he received a copy of the letter dated 11/12/2017 addressed to Respondent No.3 PIO of the District and Session Court, Margao-Goa by Respondent No.1 thereby transferring his application in terms of section 6(3) of the Right to Information Act 2005.
5. It is the contention of the appellant that Respondent no. 2 first appellate authority passed an order on 12/12/17, upholding the say of PIO and thereby directing the Respondent No. 1 PIO to transfer the application of the appellant to the concern Public Information Officer (PIO) u/s 6(3) of the RTI Act, 2005.
6. In the above background the appellant being aggrieved by said response of PIO and order of FAA, has approached this commission in this second appeal u/s 19(3)of the Act on 12/03/2018 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 along with his brother Nevil Furtado. Respondent no. 1 PIO Shri Raju Raut Desai, DySPwas present along with APIO Philomena Costa. Respondent No. 3 was represented by Ms. Dina Mario Helena A. Afonso. Respondent No. 2, FAA opted to remain absent.
8. Reply filed by Respondent No. 1 PIO on 11/04/18 along with enclosures and by Respondent No. 3 on 17/04/2018. The copy of the same was furnished to the appellant.
9. Rejoinder also filed by the appellant on 17/04/2018 to the reply of the Respondent No.1 dated 10/04/2018 along with the enclosures.

10. Arguments advanced by both the parties.
11. I have perused the records available in the file and also considered the submissions of both the parties.
12. It is contention of the appellant that he had earlier filed application on 10/11/2010 addressed to Superintendent of Police, South Goa under the RTI Act seeking the same information and the copies of photos were furnished to him were black and white by then PIO vide letter dated 2/12/2010. As the said photographs were maintained in coloured, he had sought the information once again by this present application dated 08/10/2017.
13. It is his further contention that PSI Mira D'silva then attached to Colva Police station had clicked the said photographs in the year 2009 by using a camera belong to Colva Police Station. It is his further contention that camera has also memory card to store data obtain by the police so as to use the same as evidence in any matter. It is his further contention that the said data/ information is also transferred and stored in the office computer in electronic format.
14. It is his further contention that several RTI applications seeking information from various authorities pertaining to Furtado Guest House/Beach Resorts only gets answer that required document/information not available in the file or that file is missing.
15. It is his further contention that the said information though available in the records of the Government at some point of time, cannot be traced despite of best efforts made in those regards, then the authority/department must necessary fix the responsibility for the loss of records and take appropriate action as per CCS rules for failure to safeguards records.
16. It was further contended that by merely stating that information sought by the appellant is not available in the office records doesn't absolve the Respondent PIO of his wrong doings.

17. The appellant in support of his above contention has placed on record his RTI application dated 10/11/2010, reply dated 2/12/2010 of PIO given in terms of section (7) thereby enclosing the Xerox copies of the photographs.
18. Vide reply the respondent No. 3 have stated that they have framed the rules to enforce provisions of the RTI Act and which is published in the Goa government Official Gazette Series-I No. 25 dated. 17/09/2009 and the Respondent No. 3 is governed by the said rules framed by the Hon'ble High court. It is further contended that the application of the appellant was not as per the prescribed form 'A' as required under rule 4 as such the same could not be processed and was filed by order dated 22/12/2017. It was further contended that the appellant has not filed any first appeal before the FAA therefore the second appeal is not maintainable.
19. The respondent No. 1 PIO by his reply dated 11/04/2018 ,have contended that the report was obtained by him from APIO/PI of Colva Police station and it is submitted by APIO/PI of Colva police station that,the photographs are not available at Colva Police station. It was further submitted that APIO/PI Colva police station verified the case papers which was submitted before the Hon'ble JMFC court, Margao along with the final report and that no any photographs were found. In support of his above contention he has relied upon letter dated 10/04/2018 addressed to him by PI of Colva Police Station.
20. In the nutshell the PIO has not disputed that the photographs of the scene offence were taken and the black and white copies of the scene were provided to the appellant vide their letter dated 2/12/2010. It is the contention of PIO 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.

21. 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.
22. 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 photographs taken during the panchanama. 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.
23. It is quite obvious that appellant has suffered lots of harassment and mental agony in seeking the information and pursuing the matter before different authorities
24. The Honble 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 ".

25. Considering the above position and as the coloured photographs 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.
26. In the above circumstances and in the light of the discussions above I dispose of the above appeal with the following:

ORDER

- a) The Superintendent of Police, South Goa at Margao or through his representative shall conduct an inquiry within four months regarding the said missing photographs pertaining to Colva Police Station crime No. 117/2009 and to fix the responsibility for missing said photographs. The Superintendent of Police, South Goa 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 photographs are traced.

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.