

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 72/SIC/2015

Shri Bharat Kandolkar
Vaddy Candolim,
Bardez Goa.

.....Appellant.

V/s.

1. Public Information Officer
The Secretary,
Village Panchayat Candolim,
Candolim Goa.

2. The First Appellate Authority,
Block Development Officer Bardez,
Mapusa Bardez Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 24/6/2015

Decided on: 2/1/2018

ORDER

1. The brief facts leading to present appeal are that the appellant Shri Bharat Candolkar by his application, dated 6/2/2015, filed u/s 6(1) of The Right to Information Act, 2005 sought certain information from the PIO of office of the Village Panchayat Candolim, under two points as stated therein in the said application with regards to the application dated 7/3/2001 addressed to the Sarpanch by one Shri Laxman Vishram candolkar. The application dated 7/3/2001 was annexed to his RTI application. The appellant had also sought inspection of the respective documents, Files, Registers etc.
2. The said application was responded by Respondent No.1 herein on 3/3/2015 interalia informing appellant that "records not traceable".

3. As the information as sought was not furnished , the appellant filed first appeal to the respondent No.2 being the first appellate authority on 9/3/2015.
4. The Respondent NO. 2 vide order dated 22/4/2015 directed the Respondent PIO to allow the appellant to inspect the concerned records within the 10 days from the receipt of the order.
5. According to the appellant the Respondent PIO did not comply with the order of the first appellate authority and failed to offer him the inspection or the information within 10 days from the receipt of the order
6. Being aggrieved by the order of Respondent No.2 First appellate authority and by action of Respondent No. 1 PIO , the appellant approached this commission by way of second appeal on 22/6/2015 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, including penalty.
7. Notices were issued to the parties, pursuant to which appellant was present along with Advocate Atish Mandrekar Respondent no. 1 PIO was represented by Advocate S. Curria.
8. The PIO on 13/7/2016 filed his reply so also Affidavit was filed by him on 5/10/2016 interalia contending that after proper search of the records he has replied that the "records not traceable". He had further contended that the inspection of the records of the Panchayat or the public authority till date never denied to appellant. It was further contended that the application dated 7/3/2001 addressed to the Panchayat does not bear the entry stamp inward number, as such it is his contention that the fact of very existence of the application comes under the clouds. It was further contended that out of goodwill he had offered to reconstitute the said application on the basis of the records Available with the appellant, however the appellant declined to

furnish the same. It was further contended that the probable motive of the appellant was to seek revenge against the public authority for the demolishing of illegal toilet and the pending case proceedings.

9. The copy of the reply and affidavit was furnished to the appellant.
10. Arguments were advanced by Advocate Shri Atish Mandrekar on behalf of appellant. It was contended that till date no information furnished inspite of the order of first appellate authority. He further submitted that affidavit dated 5/10/2016 of the PIO Shri Rui Cardozo should not be accepted as he has made a false statement raising doubt on filing of application dated 7/3/2001 by one Shri Laxman Candolkar with the said Panchayat. According to the appellant in their own reply filed before first appellate authority he has admitted at para 7 that the father of the appellant Mr. laximan Candolkar had earlier filed applications dated 7/3/2001 for construction for a septic tank with a soak pit which was not pursued by him. It is his further contention the PIO is liable for perjury for making false statement on oath. He further submitted that the application dated 7/3/2001 bears the signature of the clerk of the said Panchayat of having received the said application on 7/3/200. In support of his argument he has placed on record the copy of the proceedings sheets of the Block development officer, reply of PIO dated 10/4/2015 filed before First appellate authority, the wakalatnama of then Advocate Shri Anthony M.D'Souza, memorandum dated 21/6/2011 and the records of the accounts book, records of the other files and the registers maintained by the Village Panchayat.
11. The copies of the above documents were received by the Advocate for the respondent under objection since the copies were not attested.
12. Written arguments were filed by the Respondent PIO on 9/2/2017 relying upon some citation of Central Information Commission. I

have to observe that the said orders does not have an binding effect over Commission , being passed by another Commission with concurrent jurisdiction.

13. I have perused the records and also considered the submissions of the parties.
14. It is the contention of PIO that the records are not traceable . vide their own reply before first appellate authority dated 10/4/2015 they have admitted that father of the appellant Mr. Laxman candolakar has earlier filed application dated 7/3/2001 for construction of Septic tank with a soak pit 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 .
15. 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 .
16. 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
17. 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 ”.

18. 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.
19. The facts of the present case does not warrant levy of penalty on the PIO as the PIO is suppose to furnish the information as it exists and which is available on the records of the public authority. The PIO has affirmed on oath that he has carried out proper search of the records available in his possession and the said could not be traced. The PIO has also promptly reply/responded the application of the appellant within stipulated time of 30 days.
20. The appellant has claimed the compensation for his harassment in terms of section 20 of RTI Act, 2005, However I find no evidence to substantiate his claim. On the contrary there appears to be some truth in the statement of the PIO that he out of his goodwill

had offered to reconstitute the said application on the basis of the records available with appellant and that appellant declined to furnish the same is not disputed by the appellant. Never the less the Respondent PIO during the present hearing also was cooperative and extended his help to sought out the grievances of the appellant with regards to same subject matter of construction of septic tank and a soak pit in of survey No. 128/2 of Village Candolim. Hence I am unable to grant the same.

21. Since , Respondent PIO have shown his desire to give appellant inspection of the said file I feel the ends of Justice will meet with the following order:

Order

- a) The appellant if so desire may approach the Respondent PIO within one month from the date of the receipt of the order for carrying out the inspection of files available on record of the public authority pertaining to the information sought by him vide his application dated 6/2/2015. The date for inspection should be mutually fixed by both the parties.
- b) To implement section 4 of RTI Act within a three months and to report compliance to this Commission.
- c) The Director of Panchayat, Panajim or through his representative shall conduct an inquiry within four months regarding the said missing file/documents and fix the responsibility for missing said file/documents. The director of Panchayat Panajim 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 this Commission and also 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.

- d) The Public authority concerned herein also shall carry out the inventory of their records with 3 months and are hereby directed to preserve the records properly.
- e) 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