

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

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

**Appeal No. 98/2018/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: 24/04/2018**

**Decided on: 19/06/2018**

**ORDER**

1. The brief facts leading to present appeal are that the appellant Shri Jawaharlal Shetye by his application, dated 24/07/2017 filed u/s 6(1) of The Right to Information Act, 2005 sought for certified copies of all the occupancy certificates issued by the Mapusa Municipal Council during the period 01/01/2005 till 31/03/2005 and also the certified copies of all the occupancy certificate issued in the name of Smt. Geetabala M. Naik Parulekar and others since January 2003 till December 2007. The Said information was sought from the Respondent No. 1 Public Information Officer (PIO) of the Mapusa Municipal Council.
2. It is the contention of the appellant that he did not receive any reply to his above application from the PIO nor any information was furnished to him.

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 29/08/2017.
4. It is the contention of the appellant that though the Respondent No. 2 issued him the notice, did not disposed his first appeal within stipulated time as such he was forced to file the present appeal.
5. In the above background the appellant being aggrieved by action of PIO and of First Appellate Authority (FAA), has approached this commission in this second appeal u/s 19(3) of the act on 24/04/2018 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, including compensation.
6. Notices were issued to the parties, pursuant to which appellant was present in person. Respondent PIO Shri Vyankatesh Sawant appeared and filed his reply on 19/06/2018. The Respondent No. 2 First Appellate Authority (FAA) opted to remain absent despite of due service of notice nor filed any reply to the proceedings.
7. Arguments were advanced by both the parties.
8. The appellant submitted that he has sought the said information in the larger public interest in order to expose the irregularities and illegalities committed by the public authority concerned herein. He further submitted that grate hardship has been caused to him in pursuing his application before the different authorities. He further submitted that both the Respondent did not take diligent steps in discharging their responsibilities under the RTI

Act, and on that ground he pressed for penal provision including disciplinary proceedings as against then PIO and also sought for compensation.

9. It was submitted by present PIO Shri Venkatesh Sawant that when the application of the appellant was received by them in their office, Shri Shivram Vaze was officiating as PIO for Mapusa Municipality. It was further submitted that the efforts were made to provide the information at sr. no. 1 and 2 and thorough search was conducted in order to locate the said files but the said files are not traceable in their record room. He further submitted that if the files are traced then the required documents will be furnished to the appellant free of cost. He also prayed for the lenient view in the above matter.
10. I have perused the records and also considered submissions of the parties.
11. In the nutshell 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. 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 files/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 files. 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 © 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 files/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. Both the respondents have not acted in conformity with the RTI Act, 2005. The Respondent then PIO Shri Shivram Vaze have failed to respond to the said Application filed by the appellant u/s 6 (1) of the RTI Act. If the appellant had been informed at the initial stage itself about the non traceability of files, lots of time and energy spent by appellant in pursuing the said application before different authorities could have been avoided.

The first appellate authority ought to have disposed the first appeal maximum within 45 days. From the records it could be gathered that the first appeal was not disposed within the period of 45 days. Hence the act on the part of the both the Respondents herein is condemnable. However as there is nothing on record to show that such act on the part of the Respondent is persistent, a lenient view is taken in the present proceedings and Respondents are directed to be vigilant hence forth while dealing with the RTI matters.

17. For seeking compensation, the burden lies on the claimant, as there is no evidence of detriment or losses suffered by the appellant, the relief of compensation sought by the appellant cannot be granted.
18. 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 or through his representative shall conduct an inquiry within four months regarding the said missing files/documents pertaining to Occupancy certificate issued by the Mapusa Municipal Council and to fix the responsibility for missing said documents/files.

The Director of Municipal Administration 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 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) Both the respondents are hereby directed to be vigilant henceforth while dealing with the RTI matters and to strictly comply with the provisions of the Act. Any lapses on their part in future will be viewed seriously.
- e) In exercise of my powers conferred u/s 25(5) of RTI Act 2005 this Commission recommends that the Director of Municipal Administration 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) Copy of this order shall be sent to Director of Municipal Administration, Panjim Goa for information and necessary action.

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

Kk/-