

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 157/2018/SIC-I

Antonio Gomes,
R/o H.No. 308, 2nd Palvem,
Deussua Chinchinim,
Salcete- Goa.

.....Appellant

V/s.

1. Public Information Officer
The Mamlatdar of Salcete,
O/o the Mamlatdar of Salcete,
Margao- Goa.

2. First Appellate Authority
Dy. Collector & SDO,
Margao- Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 29/6/2018

Decided on: 07/08/2018

ORDER

1. The brief facts leading to present appeal are that the appellant Shri Antonio N.M.Gomes herein by his application dated 17/12/2015 filed u/s 6(1) of the Right to Information Act, 2005 sought certified copies of documents in case No. MUND/JM-11/INJ/1/95 from the Respondent No. 1 Public Information Officer, of the office of Mamlatdar, Margao, Salcete- Goa.
2. According to the appellant the said application was responded to by the Respondent No. 1 on 13/1/2016 thereby informing him that the MUND/JM-11/INJ/1/95 is not traceable and no sooner the file is found the documents will be made available to him
3. According to the appellant by his letter dated 8/3/2016, 31/7/2017, 1/9/2017 he reminded the Respondent PIO that he had not received the documents and therefore requested PIO to provide him the requisite information.

4. It is the case of the appellant despite of reminder as no information came to be furnished to him he preferred first appeal before the Respondent No. 2 Dy. Collector and SDO at Margao on 1/9/2017 being the First appellate authority and the FAA by an order dated 3/10/2017 directed the Respondent No. 1 to provide the information to the appellant within 15 days by thoroughly searching the office records.
5. It is the contention of the appellant that the Respondent PIO did not comply the order of FAA neither furnished him the information despite of repeated inquiries as such being aggrieved by the action of the Respondent PIO and as he did not received any certified copy of the document, he preferred appeal within stipulated time by an application dated 1/11/2017 which was inwards vide No. 2317 in the registry of this commission which was withheld by the registry of this Commission being not filed according to the appeal procedure. Hence it is a contention of a the appellant that he preferred the present appeal after rectifying the errors on 29/6/2018 in terms of section 19(3) of RTI Act, thereby seeking directions as against respondent PIO for furnishing his correct information.
6. In pursuant to the notice of this commission the appellant was present in person. Respondent PIO was represented by APIO Sharad Naik.
7. The appellant on the first date of hearing filed application thereby enclosing xeros copy of roznama, interalia contending that though the said Mundakar case was pertaining to year 1985, the certified copy of the Roznama was issued on 30/9/2005 by the office of Mamladar of Salcete, Margao, Goa and as such it is a contention that the said file was available and was existing with the concerned authority which have been now reported as not traceable. The copy of the said application filed by the appellant on 23/7/2018 alongwith the enclosure was provided to the Respondent APIO.

8. Opportunity was given to the PIO to file his reply to the appeal proceedings despite of that no reply came to be filed on his behalf. Considering the above circumstances, I hold that PIO has no reply to be filed and the averments made in the appeal are not disputed.
9. Since the appellant is a senior citizen who travelling from Chinchinim and as the Respondent PIO did not show any interest in the matter the arguments of the appellant were heard.
10. I have scrutinize the records available in the file. And also considered submission of the appellant.
11. It is the contention of present PIO as stated therein in his reply dated 13/1/2016 given interms of Section 7(1) that the information is not traceable and as such not presently available in their records. The order of first appellate authority also reveals that the Respondent PIO have taken the same stand of file not traceable before the first appellate authority also. 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 that ground of "non availability of records " is not qualified to be exempted u/s 8 of the RTI act .
12. 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 ``.

13. 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.
14. It has been also observed by this commission that in many such matters the PIO has taken a plea that the files are not traceable and hence it is the need of the hour to conduct inventory of the records.
15. In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following :

ORDER

1. The Collector of south Goa District at Margao, Salcete, Goa or through his authorized officer shall conduct an inquiry regarding the said missing Case No. MUND/JM-11/INJ/1/95 and fix the responsibility for missing said file/documents. And shall complete such inquiry within 4 months from the date of

receipt of this order by him. The Collector of South Goa District at Margao 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.

2. The Public authority concerned herein i.e. the office of Mamlatdar of Salcet, at Margao is hereby directed to do the inventory of the records within 4 months and to take appropriate steps in preserving the records.

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