

# **GOA STATE INFORMATION COMMISSION**

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

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**Appeal No. 129/2015**

Ms. Lida Joao,  
R/o. House No. 390,  
Baga, Velim, Salcete -Goa

..... Appellant

**V/s.**

Public Information Officer  
District and Sessions Court,  
South Goa, Margao-Goa

..... Respondent

**CORAM:**

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

**Filed on: 22/12/2015**

**Decided on: 16/03/2018**

## **ORDER**

1. The appellant herein Ms. Lida Joao by her application dated 5/1/2015 filed u/s 6(1) of the Right to Information Act, 2005 sought certain information from the Public Information Officer, (PIO), District and Session Court, South Goa, at Margao.
2. It is the contention of the appellant that her above application was not responded by the PIO as such she wrote a letter dated 31/1/2015 requesting the PIO for furnishing her the information as sought for by her .
3. According to the appellant despite of her reminding the PIO, he did not furnish her the required Information as sought by her and as such deeming the same as refusal the appellant filed first appeal on 26/2/2015 before the Additional District Judge-I South Goa, at Margao.
4. During the proceedings before the First appellate authority the information at point No. (a) and (b), part of the

information at (b) with respect to Civil Suit No. 118/98/II was provided to the appellant by respondent PIO and with respect to civil suit No. 765/00/II it was informed that it is not available.

5. The first appellate authority by an order dated 28/9/2015 dismissed the 1st appeal filed by the appellant.
6. Being aggrieved by the action of the Respondent PIO and the first appellate authority, the Appellant preferred present appeal on 22/12/2015 in terms of section 19(3) of RTI Act, thereby seeking directions as against respondent PIO for furnishing her correct information in respect of regular civil suit No. 765/00/II and for invoking penal provisions.
7. In pursuant to the notice of this commission the appellant appeared in person. Respondent PIO represented by Advocate Kishore Bhagat.
8. Reply filed by Respondent PIO on 3/8/2017 and also affidavit on 13/10/2017 and on 5/3/2018. Vide reply and affidavit, the PIO contended that PIO had already supplied the information to the appellant in respect of regular Civil suit No. 118/98/II. It is further contended that the information in respect of regular Civil Suit no. 765/00/II is not available in the office of PIO as such cannot be furnished to the appellant .
9. Arguments were advanced by both the parties.
10. It is a contention of the appellant that the great hardship has been caused to her in pursuing the said application. Despite of reminders the PIO has not responded her said application. Part of the information came to be furnished to

her only during the proceeding before the first appellate authority.

11. The Advocate for the Respondent submitted that there was no malafide intention for not providing information. It was further contended that whatever information was available in their records with respect to Civil suit o. 118/98/II was furnished and with respect to suit No.765/00/II the information was not available in their records .
12. I have scrutinize the records available in the files also considered submission made on behalf of both the parties.
13. It is the contention of the PIO that file in respect to regular civil suit 765/00/II is not available /could not be traced despite making several attempts. In other words the respondent is trying to say that those files are presently untraceable as it is misplaced .
14. 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 .
15. 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 “.

16. Considering the above position and the file/documents in respect to regular civil suit No. 765/00/II is not traceable till date, as is affirmed by PIO vide his affidavit dated 13/10/2017 and 5/3/2018 filed here, 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.
17. It is seen from the records that the application of the appellant was not responded by the PIO within stipulated

time of 30 days as contemplated in terms of section 7(1) of RTI Act. The records also reveals that the appellant had sent a reminder letter dated 31/1/2015 despite of same PIO did not bother to reply the same leave aside for furnishing the information. The part of the information was provided only by the Respondent only before first appellate authority. There was delay in responding and in providing the information to the appellant. Para (4)of the reply of Respondent PIO dated 3/8/2017 speaks that they have rejected the application of the appellant in respect of Point no. (b) and (c) and accordingly informed the appellant within 30 days from the date of receipt of the said application. However nothing documentary evidence have been placed on record substantiating the above contention.

18. The RTI act came into existence to provide fast relief and as such time limit is fixed under the said Act to dispose application u/s 6(1) within 30 days and to dispose first appeal maximum within 45 days. Such an conduct on the part of the PIO is in contravention against the RTI Act and as such it is condemnable .
19. Considering the conduct of the PIO and their in different approach to the entire issue I find some substance in the contention of the appellant and this leads me to prima facie hold that this action of the PIO attracts Penalty u/s 20 of the RTI Act 2005. However I find appropriate to seek explanation from the PIO as to why the penalty should be imposed on him for not responding the application of the appellant within stipulated time of 30 days and for delaying in furnishing full and complete information .

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

**ORDER**

- a. The Superintendent of District and Sessions Court , South Goa at Margao, shall conduct an inquiry regarding the said missing documents and file in respect of regular Civil Suit No. 765/00/II and to 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 Superintendent of District and Sessions Court , South Goa 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 /document is traced.
  
- b. Issue Show cause notice to The PIO calling upon him to explain why penalty should not be imposed on him for not responding the application within stipulated time and for delaying information as contemplated u/s 20(1) of the RTI Act 2005, returnable on 2/04/2018 at 10.30 am.

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

Ak/-