

GOA STATE INFORMATION COMMISSION

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

Appeal No. 182/2017

Shri Kashinath Tari,
Ramnath Apartment,
B-2, F-1, Shankarwadi,
Taleigao-Goa.

..... Appellant

V/s.

1. Public Information Officer
North Goa Planning & Development authority,
Mala Panaji Goa.

..... Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 06/11/2017

Decided on: 22/01/2018

ORDER

1. The appellant herein Shri Kashinath Tari by his application dated 2/11/2016 filed u/s 6(1) of the Right to Information Act, 2005 sought certain information from the Public Information Officer, (PIO) of Town and Country Planning Department Patto, Panajim, Goa, under 3 points as stated therein in the said application .
2. The PIO of Town and Country Planning Department Tiswadi Taluka Patto, Panaji, Goa then on 7/11/2016 transferred the said application to the Respondent No. 1 i.e to the PIO of North Goa Planning & development authority, Mala, Panaji Goa u/s 6(3) of RTI Act.
3. The Respondent no. 1 the PIO vide his letter dated 28/11/2016 informed the appellant that information sought by him cannot be furnished as the said authority is not maintaining file with survey Number/Location and requested the appellant to provide the specific reference Number given by them in order to locate the required information.

4. In pursuant to the letter of PIO dated 28/11/2016, the appellant provided the reference numbers of required information by letter dated 1/12/2016.
5. According to the appellant despite of furnishing the reference numbers of the files, the PIO did not furnishing him the required Information as sought by him and as such deeming the same as refusal the appellant filed first appeal on 19/1/2017 before the Chairmen of North Goa development and Planning authority at mala Panajim .
6. According to the appellant the first appellate authority did not hear and disposed the said appeal as such he had sent reminders to the first appellate authority on 2/03/2017, 18/4/2017, 5/6/2017, 1/8/2017 and on 7/9/2017.
7. According to the appellant the first appellate authority did not pass any order on the first appeal as such being aggrieved by the action of the Respondent PIO and the first appellate authority , the Appellant preferred a present appeal on 6/11/2017 in terms of section 19(3) of RTI Act, thereby seeking directions as against respondent PIO for furnishing him correct information and for invoking penal provisions including compensation.
8. In pursuant to the notice of this commission the appellant appeared in person Respondent PIO Shri R.K. Pandita appeared along with Advocate H.D.Naik . Reply filed by Respondent PIO on 3/1/2018 and also affidavit on 9/1/2018. Vide reply and affidavit, the PIO contended that there was no record keeper appointed in the north Goa Planning development authority, as such it became difficult to trace a relevant file pertaining to the year 2004, despite of making several attempt. It is his contention that some where in august in the year 2017 he was able to trace one of the file at serial No. 2 and the other two files of which the information was sought by the

appellant where not traceable and accordingly he addressed letter dated 22/8/2017 informing the said fact to the appellant and the appellant was requested to collect the information by making payment of Rs. 116/- . It is his further contention that as appellant failed to collect the said information, he vide letter dated 13/12/2017 again provided the information regarding file Number PPDA/TIS/DEV/248. Vide said letter it was also informed the conversion certificate was not available in the above file.

9. Arguments were advanced by both the parties. It is a contention of the appellant that the great hardship has been caused to him in pursuing the said application. Despite of reminders the first appellate authority has not disposed the first appeal. It is his further contention that the direction of the PIO to deposit Rs. 116 /- is not in accordance with law. He further sought relief of penalty and compensation.
10. The Advocate for the Respondent submitted that no letter was issued to the appellant as he could not trace the said file within 30 days . It was his contention that there was no malafide intention for not providing information. It was further contended that once a two other files are traced the information will be submitted to the appellant without any cost.
11. I have scrutinize the records available in the files also considered submission made on behalf of both the parties.
12. It is seen from the records that the appellants had provided the reference numbers of the relevant documents to the Respondent on 1/12/2016 . The part of the information was provided only on 22/8/2017 by the Respondent . The respondent PIO have admitted that there was delay in responding and in providing the information to the appellant and tried to justify the delay. There is a delay approximately about nine month in responding the said

application and providing part of the information . **It could gathered from the records that part of the information is furnished to the appellant is only after filing the present appeal.**

13. It is the contention of the PIO that development permission were issued by the authority in the year 2004 and the said files pertaining to reference NO. PPDA/TIS/DEV/03/2833/04 dated 28/7/2004 and No. PPDA/TIS/DEV/169/146/04 dated 6/4/2004 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 to reference NO. PPDA/TIS/DEV/03/2833/04 dated 28/7/2004 and NO. PPDA/TIS/DEV/169/146/04 dated 6/4/2004 is not traceable till date, as is affirmed by PIO vide his affidavit dated 9/1/2018 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. The records also shows that even though the first appeal was filed by the appellant before the First appellate authority, the same was not taken up for hearing. 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 and First appellate authority is in contravention against the RTI Act and as such it is condemnable .
18. Considering the conduct of the PIO and the First appellate authority 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 Act and also compensation interms of section 19(8)(b) of RTI Act. However I find appropriate to seek explanation from the PIO and from public authority as to why the penalty and compensation should be imposed by them for delaying and for not furnishing full and complete information .

19. The directions of the PIO to deposit an amount of Rs. 116/- is not in conformity or in accordance with law as section 7(6) state/speaks that were the public authority fails to comply with the time limit specified in sub-section 1 of section 7 in such circumstances the appellant is entitles to receive the information free of charge. As such calling upon the appellant herein to deposit the amount of Rs. 116/- is not in accordance with law.

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

ORDER

1. Issue Show cause notice to The PIO R.K.Pandita 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 8/2/2018 at 10.30 am.
2. Issue Show cause notice to public authority concerned herein/ Office of North Goa Town and Country Planning Department, Mala, Panajim to showcause as to why it should not be order to compensate the appellant as contemplated u/s 19(8)(b) of the RTI Act.
3. The Chief Town Planner of Town and Country Planning Department, Tiswadi Taluka, Panajim, Goa or through his representative shall conduct an inquiry regarding the said

missing documents and files 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 Chief Town Planner of Town and Country Planning Department, Tiswadi Taluka, 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 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.

4. The Public authority/ North Goa Town and Country Planning Department, Mala, Panajim concerned herein also shall carry out the inventory of their records with 3 months and are hereby directed to preserve the records properly.
5. 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

