

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

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Appeal No.36/SCIC/2012

Shri Nevil Furtado,
H. No.51, Copelwaddo,
Sernabatim- Salcete –Goa. Appellant

V/s

- 1) The Public Information Officer(PIO),
O/o The GCZMA,
Saligao –Goa.
- 2) The Member Secretary,
GCZMA(FAA). Respondents

Filed on : 15/02/2012

Disposed on: 12/06/2018

1) FACTS IN BRIEF:

- a) The appellant herein by his application, dated 30/09/2011 filed u/s 6(1) of the Right to Information Act 2005(Act for short) sought information from the Respondent No.1, PIO being(1) Report of the office of Collector South Goa, Margao, dated 25/10/2000 regarding illegal construction at Sernabatim, (2)Panchanama/ inspection held on 31/03/2001 held by GCZMA & (B) Photographs clicked during inspection with measurement and recordings.

- b) The said application was replied by then PIO on 04/11/2011 calling upon appellant to collect the

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information on payment of Rs. 8/-, which the appellant collected on 15/11/2011. However according to appellant the information as sought at points (2) and (3) was not furnished and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

- c) The FAA till the date of filing of this appeal before this Commission failed to dispose the said first appeal.
- d) The appellant has therefore landed before this Commission in this second appeal u/s 19(3) of the act.
- e) Notices were issued to the parties, pursuant to which they appeared. The then PIO on 09/07/2012 filed reply to the appeal. It is the contention of PIO in the said reply that vide reply of PIO, dated 04/11/2011 it was informed to the appellant that the information at points (2) and (3) are not available and that the appellant was requested to inspect the records and cross check for himself and even the appellant could not trace the same. It is the further contention of PIO that the member Secretary i.e. Respondent No.2 herein had filed complaint to the Calangute Police station regarding missing file and requesting for an inquiry. The PIO has filed on record the copy of Police complaint. The PIO has also raised other contention in the reply that as the information is already furnished, appeal should be dismissed.

Subsequently on 25/09/2017 present PIO filed additional reply inter alia submitting that the member Secretary has filed additional complaint to Police regarding further missing documents.

- f) The Appellant filed written submissions on 30/10/2017. It is his contention therein that the response of PIO, dated 04/11/2011 is vague and not convincing. According to appellant the PIO has not made any sincere efforts to locate the information sought at points (2) and (3) and that the reply dated 04/11/2011 is only to complete the formality of information to the appellant.
- g) In his said arguments the appellant has also urged the need of appointing records officer. According to him the FAA has not passed the order in connivance with the PIO and that both of them are deliberately hiding the information. It is further according to appellant that the filing of complaint to Calangute Police is only a formality and that PIO has failed to conduct any internal investigation in the matter to conclude the reason as to why information is missing.
- h) The PIO also filed his further written submission on 30/10/2017, wherein it is submitted that the respondent Authority has sought to know from the Calangute Police Station the status of the Complaints filed by it, by a letter dated 17/10/2016 and reminder thereto on 26/12/2016 and that till date the inquiry on the said complaint is not conducted.

The PIO has further submitted therein that its office by letter dated 03/10/2016 has sought the copy of the same report and the photographs which is the information sought by appellant. According to PIO the office of Dy. Collector and S.D.O. Salcete by its letter, dated 24/10/2017, PIO is informed by said office of

Dy. Collector & SDO that his predecessor Smt. Sangeeta Naik has lodged Police complaint to the Margao Town Police regarding the missing file No.LRC/Illegal Conv/40/2000 vide letter dated 30/01/2014. Copy of said letter, dated 24/10/2017 addressed to the PIO herein is annexed by PIO.

- i) Considering the facts of the matter, and with a view to seek evidence regarding non availability of the information, this Commission directed the PIO to file affidavit in support of the stand taken by PIO herein. Accordingly, PIO Shri Sanjeev Joglekar on 21/02/2018 filed his affidavit. Vide said affidavit the PIO affirmed the statements and submissions contained in the said reply dated 09/07/2012, 25/09/2017 and 30/10/2017. In his said affidavit it is interalia stated by him that the files pertaining to the information sought is not traceable. According to him another file pertaining to illegal conversion before the Dy. Collector & S.D.O. Salcete, which also contained the same information is also not traceable. It is according to PIO the complaints filed by him to Calangute Police and that filed by Dy. Collector & SDO Salcete to Margao Police are not investigated yet.
- j) The appellant has filed his affidavit in counter. In his said affidavit by narrating the sequence of events, he has stated that the responsibility should be fixed on the erring officer for loss of files and further appropriate action should be initiated. By raising the limitations of the police department in conducting investigation in missing files he has stated that the

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inquiry should be ordered. By referring to the proceedings in Writ Petition No.125/1996, the appellant has also narrated as to how the respondent Authority was constituted. In support of his said averments appellant has relied upon the judgment passed by the Hon'ble High Court of Delhi, in the case of *union of Indai v/s Vishwas Bhamburkar*. (Writ petition NO.2660/12 & CM 7664/2012(stay)).

2)FINDINGS:

a) Perused the records and considered the rival contentions of the parties. It is an undisputed fact that at sometime the information sought i.e. the panchanama/inspection and photographs did exist in the records of respondent Authority i.e. GCZMA. From the submissions of the PIO and his affidavit it is further noticed that same documents also formed part of the records of office of Dy. Collector and SDO Salcette, in file/case No.LRC/Illegal /Conv/40/2000. The said information was denied by PIO as it was not available with it. In this regard complaints were filed by PIO to Calangute Police station followed by a reminder way back in 2012, 2014 and 2016. Such complaints and reminders have not yielded in any results.

In an attempt to secure the same information, the PIO has sought it from the office of Dy. Collector & SDO, Salcette. In the said office also the same is found missing and complaints and reminders have also initiated through said authority to Margao Police

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station, but till date without any results. In the above background the prayer of the appellant seeking direction to furnish the information at points (2) and (3) cannot be considered at this stage.

b) As held above the information as is sought by appellant is actually generated and hence was existing in the records of the respondent Public Authority herein i.e. GCZMA. It is also not in dispute that some records were also held by another authority viz. office of Dy. Collector & SDO South Goa. According to PIO the same records from both the public authorities are missing simultaneously. Such a situation raises a serious doubt and missing of records appears to be an organized act. Though reports are lodged with Police by both authorities, no results have been achieved.

c) The Hon'ble High court of Delhi in the case of *Union of India V/s Vishwas Bhamburkar* (Supra) by upholding the order passed by the Commission has observed:

“7. This can hardly be disputed that if certain information is available with a public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the government departments to evade 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 the other was available in the records of the government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by that department for destruction of old record. Therefore, whenever an

information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information sought by the applicant cannot be traced or was never available with the government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing his inability to provide the desired information. Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/ officials responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/ office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/ office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.

8. Since the Commission has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/ readily traceable/ currently traceable. Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in

fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/ office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the government at some point of time or not. After all, it is quite possible that the required information may be located if a thorough search is made in which event, it could be possible to supply it to the applicant. Fear of disciplinary action, against the person responsible for loss of the information, will also work as a deterrence against the willful suppression of the information, by vested interests. It would also be open to the Commission, to make an inquiry itself instead of directing an inquiry by the department/ office concerned. Whether in a particular case, an inquiry ought to be made by the Commission or by the officer of the department/ office concerned is a matter to be decided by the Commission in the facts and circumstances of each such case.(emphasis supplied)

9. -----”

And considering nature and extent of inquiry the Hon’ble High Court has held at para (10) as under:

“10. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. The interim order dated 1.6.2012 stands vacated. In my view, the inquiry conducted by the petitioner in compliance of the order passed by the Commission on 17.4.2012 was not at all satisfactory. It is, therefore, directed that a thorough and meaningful inquiry in terms of the provisions of the directions of the Commission be carried out by an officer not below the rank of a Joint Secretary to the Government within eight weeks from today and a copy each of the said report shall be provided to the Commission as well as to the respondent before this Court.”

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d) Considering the above circumstances and the ratio laid down by the Hon'ble High Court of Delhi, this Commission finds that though reports are lodged with Police department no results are achieved. It is therefore necessary that a thorough and meaningful probe is ordered and to inquire into the loss of the concerned files from both the offices and thereafter fix the responsibility and initiate appropriate action against the culprit.

e) Considering the fact that the records pertaining to the same information is missing simultaneously from two public authorities i.e. office of GCZMA and office of Dy. Collector & S.D.O. Salcette, commission finds it appropriate to direct an inquiry through a common senior officer, not below the rank of Joint Secretary to Government of Goa.

f) In the backdrop of the above facts, the Commission, disposes the present appeal with the following:

O R D E R

The appeal is partly allowed. The Commission directs that a thorough and meaningful inquiry be held into the loss/misplacement of the records pertaining to file No. GCZMA/S/85/South/38 of the office of Goa Coastal Zone Management Authority (GCZMA) and file No.LRC/Illeg-CONV/40/2000 of the office of Dy. Collector & SDO Salcette by an officer not below the rank of Joint Secretary to Government of Goa, to be appointed by Chief Secretary of Government of Goa.

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A copy of this order be sent to the office of Chief Secretary, state of Goa for implementation of this order of inquiry.

Inquiry shall be completed within a period of eight weeks from the date of receipt of this order by the office of Chief Secretary.

The inquiry officer shall notify the date of inquiry to the appellant and shall permit him to produce evidence, if he wish so and after conclusion of inquiry the report be sent to the appellant.

Appeal disposed accordingly, with the rights of appellant to seek the information, if the files are traced at anytime later.

Notify parties.

Pronounced in open proceeding.

Sd/-

(Prashant S. P. Tendolkar)

State Chief Information Commissioner

Goa State Information Commission

Panaji –Goa