

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

CORAM: Shri Juino De Souza: State Information Commissioner

Complaint No.23/2018/SIC-II

Smt. Teoflina Coutinho,
H.No. 15/549
White Rock, Dona Paula Jetty,
Dona Paula -Goa

..... Complainant

v/s

1. Public Information Officer ,
Town & Country Planning Department,
Government of Goa,
2nd Floor, Dempo Towers,
Patto Plaza, Panaji-Goa.

2. First Appellate Authority,
Town & Country Planning Dept.
Government of Goa,
2nd Floor, Dempo Towers,
Patto Plaza, Panaji-Goa.

Opponent / Respondent

Relevant emerging dates:

Date of Hearing : 25-10-2018

Date of Decision : 25-10-2018

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O R D E R

1. **BRIEF FACTS** of the case are that the Complainant vide an RTI application dated 28/08/2017 sought certain information from the Respondent PIO, O/o Town & Country Planning (TCP), HQ, Government of Goa. The information is to issue Xerox copy of the Appeal memo along with documents. The Complainant has enclosed with the RTI application a copy of the Order issued by the Town and Country Planning Board taken in its 112th (adjourned) meeting held on 22/09/2003, wherein the Board decided to allow the appeal since it is allotted under rehabilitation scheme by the Government.
2. The PIO vide letter bearing No.21/22/TCP/HQ/PIO-3/286/2017(p)/160 dated 13/12/2017 informed the Complainant in paragraph No.1. that the information as sought is not available in the office record and hence the same cannot be made available .

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3. Not satisfied with the reply of the PIO, the Complainant thereafter filed a First Appeal on 18/12/2017 and the First Appellate Authority (FAA) vide an Order dated 17/01/2018 disposed off the said First Appeal. In the last paragraph, the First Appellate Authority has recorded thus: "After hearing both the Appellant as well as PIO-3 it was opined that PIO-3 shall issue necessary instructions to officials related to Records Section to put further efforts to locate the file at the earliest and thereafter PIO-3 shall provide information to the Appellant once concerned file is trace out from records. The process shall be preferably completed in 15 days from issue of this Order".
4. Being aggrieved that despite the Order of First Appellate Authority the concerned file has not been traced and the information not furnished, the Complainant subsequently filed a Second Appeal under Section 18 before the Commission registered on 27/04/2018 and has prayed to direct the Respondent PIO to furnish a proper information and to impose penalty and for other reliefs.
5. **HEARING:** This matter has come up before the Commission on three previous occasions and hence by consent is taken up for final disposal. During the hearing the Complainant Teoflina Coutinho is represented by Maria Rodrigues (daughter in law) of the Complainant who is present alongwith Adv. Richard Almeida. The Respondent PIO, Shri. Shivprasad Murari, Dy. Town Planner, TCP is also present in person. The FAA is absent.
6. **SUBMISSIONS:** Adv. Richard Almeida submits that the file pertaining to the Appeal under Section 45 of Town & Country Planning Act preferred by Piedade Coutinho, White Rock Restaurant, Dona Paula v/s North Goa Planning and Development Authority was allowed by the Town & Country Planning Board, since it is allotted under rehabilitation Scheme by the Government and which was disposed off by Board in its 112th (adjourned) meeting held on 22/09/2003.

7. Adv. Richard Almeida further submits that although the Complainant had sought information regarding the entire appeal file including the Appeal memo alongwith the documents, the same was not provided by the PIO and further although the First Appellate Authority had allowed the First Appeal and directed the concerned PIO-3 to trace the said file and once it is traced to provide record, the same has not been implemented.
8. Adv. Richard Almeida finally submits that it is shocking that the said file pertaining to an appeal which was allowed by the Town and Country Planning Board at its 112th meeting could go missing from the records of the TCP and that the Commission should order an enquiry and fix responsibility and also the PIO be made to file an Affidavit and FIR regarding the missing file. It is submitted that the appeal memo and documents are required by the Complainant for further processing of the property matter.
9. The Respondent PIO, Shri. Shivprasad Murari submits that all attempts were made to search the concerned file bearing No.TP/B/APL/45 pertaining to the appeal heard by Town Country Planning Board and that a diligent search was made and yet the said file of the year 2003 is not traceable and available in office records. The Respondent PIO also submits that pursuant to the directions of the First Appellate Authority, the officials of the records section, Head Quarters, Panaji were instructed to put additional efforts to locate the concerned file and despite all efforts the said file could not be located from office records.
10. Shri. Shivprasad Murari further submitted that the minutes of 110 and 112th meeting of TCP Board were also furnished to the Complainant as the same were available in the office records and that all cooperation was extended to the Complainant who had visited the office of the TCP -HQ as per the oral directions of the Commission and the Complainant is satisfied that the file is missing.

11. Shri. Shivprasad Murari also submitted that as additional efforts on his part a letter dated 12/06/2018 was sent to the PIO, North Goa PDA, Panaji requesting to submit entire file pertaining to an appeal filed by Smt. Teoflina Coutinho before the TCP Board and a reminder was also sent to the concerned PIO vide another letter dated 22/06/2018, however till date the PIO, no information has been received from the PIO, North Goa PDA till date. Shri. Shivprasad Murari finally submits that there is no malafide intentions on the part of the PIO to deny the information to the Complainant.
12. **FINDINGS:** The Commission on perusing the material on record and after hearing the submissions of the parties at the outset expresses anguish as to how a file can go missing from a Government Department. This is not the first case of missing files. The Commission has come across numerous such instances where files go missing and the PIO expresses helplessness. Public authorities do not appear serious in improving and strengthening the record management system.
13. Adv. Richard Almeida has argued that the PIO should file an FIR with the Police, however the Commission finds that the filing of FIR will not serve any purpose as it is not the duty of the police to search the missing file. In case the PIO had reported theft of the file, then the Police could have registered an FIR and conducted investigations, but this is not the case. The Commission is also of the considered opinion that holding an enquiry to fix responsibility is an exercise in futility.
14. As stipulated in the RTI Act the role of the PIO is to provide information accurately in accordance with record available without conceding or withholding any information. The Commission finds that it is not a case where the PIO has denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information. ...4

15. **CONCLUSION/DECISION**: The very fact that the PIO has done a diligent search for the missing file of the year 2003 and the fact that officials of the records section were instructed to put additional efforts to locate the concerned file and also the fact that the PIO furnished the minutes of 110 and 112th meeting of TCP Board to the Complainant, besides extending all cooperation to the Complainant who had also visited the office of the TCP -HQ information and finally the fact that the PIO addressed two letters dated 12/06/2018 and reminder dated 22/06/2018 to the PIO, North Goa PDA, Panaji requesting to submit entire file pertaining to an appeal filed by Smt. Teoflina Coutinho before the TCP Board is sufficient to prove the bonafide that the PIO has acted reasonably and diligently and which is the mandate of the RTI Act.
16. The Commission finds that there are no malafides on the part of the PIO to conceal or deny the information as such the prayer of the Complainant for imposing penalty on the PIO stands rejected.
17. The Commission however directs the concerned PIO to file an Affidavit with the Commission giving particulars and details of all efforts made to search and trace the file. The PIO is also directed to endorse a copy of the said Affidavit to the Complainant to be sent by speed post at the address of the Complainant within 30 days of the receipt of this Order i.e latest by 20th December, 2018.

With these directions the Complaint case stands disposed.

All proceedings in the Complaint case stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd/-
(Juino De Souza)
State Information Commissioner