

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

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner

Appeal No. 104/2018/SIC-I

Mr. Gautam Mandrekar,
H. No. 257, Kattewada,
Morjim, Pernem, Goa – 403512

.....Appellant

V/s

1) The Public Information Officer,
The Secretary,
Village Panchayat Verla Canca,
Bardez-Goa-403510

.....Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 3/05/2018

Decided on: 29/06/2018

ORDER

1. Facts in brief leading to the present appeal are that the appellant Shri Gautam Mandrekar herein by his application dated 19/01/2018, filed u/s 6(1) of The Right to Information Act, 2005 sought certain information from Respondent Public Information Officer (PIO) of the Office of the Village Panchayat Verla Canca Bardez –Goa under 11 points as stated therein in the said application.
2. The said application was replied by the PIO on 20/02/2018 thereby partly providing the information.
3. As the information as sought was not fully furnished the Appellant filed first appeal before the Block Development Officer (BDO) –II Bardez at Mapusa being the First Appellate Authority (FAA) on 13/03/2018 and the FAA by an order dated 2/04/2018 partly allowed the appeal and directed PIO to provide pointwise information with respect to pt no. IV to XI of the application dated 19/01/2018 within 7 days, free of cost from the receipt of the order. In compliance to the order of First Appellate Authority (FAA) the Respondent PIO vide his letter dated 17/04/2018

informed the appellant that the information with regards to point No. IV to XI is not available with them since the records were seized by B.D.O. vide no. BDO/BAR-1/Insp/VP Verla Canca/2015 dated 30/09/2015.

4. In this background the appellant being aggrieved by the action of the PIO has approached this Commission in this second appeal u/s 19(3) of the Right To Information Act, 2005 on 3/05/2018 with the contention that complete information still not provided and seeking order from this Commission to direct the PIO to furnish him the correct information as sought by him at point No. IV to XI in the RTI application dated 19/01/2018 and for invoking penal provisions.
5. Notices were issued to the parties. pursuant to which appellant was present in person. Respondent PIO Shri Bheldas B. Karapurkar appeared and filed his reply alongwith affidavit on 25/06/2018. The copies of the reply and affidavit was furnished to the appellant.
6. Arguments were advanced by both the parties.
7. The appellant vide his memo of appeal and also during arguments submitted that in response to his RTI application dated 1/03/2018 which was filed by him in the office of B.D.O. he received the reply dated 26/03/2018 wherein PIO of BDO Office had informed him that the information was not available, without stating any appropriate reasons. On the said basis it was submitted by appellant that the reply from the Respondent PIO is contrary to the reply received from the B.D.O. on his application dated 01/03/2018.
8. The appellant submitted that he had sought the said information in the larger public interest in order to expose irregularity in illegalities committed by the public authority concerned herein as

such it is specific case that the said information was denied to him with the malafide intentions.

9. The PIO submitted that he has recently taken charge of Village Panchayat Verla Canca and that whatever information was available in the office was provided to appellant except the information at point No. IV to XI as the said files were seized by the Office of B.D.O. Mapusa.
10. It was further submitted that he Personally visited the Office of B.D.O. at Mapusa, Goa and on verification/ checking the records at the BDOs Office, he found that the information at point no IV to XI are also not available in the said office.
11. Since it is case of the PIO the files pertaining to the information was sought was seized by the Office of BDO, a clarification was sought by this Commission whether any memorandum of seizure/Panchanama of seizure of records were made by the Officer of BDO to which the PIO replied in negative. Clarification was also obtained from PIO whether the inventory of the records and the compliance of section (4) of the RTI Act, 2005 is done by the Village Panchayat Verla-Canca to which he again replied in negative.
12. In the nutshell it is the contention of PIO that the records are not available at the office of the Village Panchayat nor at the Office of the Block Development Officer and are missing and not traceable. It is not the contention of the Respondent PIO nor of the FAA that the records were not in existence nor it is 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. Besides that mere claim of "non availability of records" has no legality as it is not recognized as exception under the RTI Act nor the not availability of records is a defense to deny the

information. If the files/documents are really not traceable, it reflects the inefficient and pathetic management of the Public Authority.

13. 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 files. 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.
14. It is quite oblivious that appellant has suffered lots of harassment and mental agony in seeking the information and pursuing the matter before different authorities
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 files/documents is not traced till date, 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. In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following:

ORDER

- a)The Director of Panchayat or through his representative shall conduct an inquiry within four months regarding the said missing files/documents pertaining to the information as sought by the appellant at point IV to XI vide his RTI application dated 19/01/2018 and to fix the responsibility for missing said documents/files. The Director of Panchayat 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 files are traced.
- b)The Public authority concerned herein also shall carry out the inventory of their records within 3 months and are hereby directed to maintain and preserve the records properly. Incase if the records are seized or sent to any other public authority by Panchayat, a necessary seizer Panchanama or Memorandum

to its effect giving the details of the file referred or send is required to be made by the Public authority hence forth.

c) The Public authority i.e Office of Village Panchayat Verla Canca is hereby directed to take immediate steps for the compliance of section 4(1)(a) and 4(1)(b) of the RTI Act, 2005 and the same shall be completed within 4 months from the date of the receipt of the orders.

d) In exercise of my powers conferred u/s 25(5) of RTI Act, 2005 this Commission recommends that the Director of Panchayat , Panaji shall issue instruction to all the Office of the Village Panchayat and the office of BDO's in the state of Goa to comply the obligation cast on them in terms of section 4(1)(a) and 4(1)(b) of the RTI Act, 2005 and any lapses on the part of Panchayats and the BDO's towards the compliance of the same be considered as dereliction of duties.

a) Copy of this order shall be sent to Director of Panchayat, Panjim Goa for information and necessary action.

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