

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

---

**Appeal No. 132/2019/SIC-I**

Shri Santana Piedade Afonso,  
H.No.263, Comba Central,  
Cuncoim,Salcete-Goa.

....Appellant

V/s

- 1) The Public Information Officer,  
Shri Joao B. Fernandes ,  
O/o the Mamlatdar of Salcete,  
Mathany Saldana Administrative Complex,  
Margao Goa.
- 2) First Appellate Authority,  
Shri Uday Prabhu Dessai, Dy. Collector and SDO,  
Office of the Dy. Collector and SDO,  
Mathany Saldana Administrative Complex,  
Margao, Salcete- Goa.

.....Respondents

**CORAM:**

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

Filed on: 25/4/2019

Decided on:20/6/2019

**ORDER**

1. The brief facts leading to present appeal are that the appellant Shri Santana Piedade Afonso herein by his application dated 20/12/2018 sought certain information from the Respondent No.1 Public Information Officer (PIO), Office of Mamlatdar of Salcete Taluka at Margao-Goa on three points as listed there in pertaining to the mutation file bearing No.44196 of the Village Colva, under survey No. 65/10 of Revenue village Colva, Salcete Goa.
2. The said information was sought by the appellant in exercise of his right under sub-section (1) of section 6 of RTI Act, 2005.
3. It is the contention of the appellant that as no complete information was received by him within stipulated time of 30 days and as such deeming the same as rejection, the appellant filed 1<sup>st</sup> appeal on 24/1/2019 before the Respondent no 2 Dy. Collector

& SDO being First appellate authority in terms of section 19(1) of RTI Act.

4. It is the contention of the appellant that the Respondent no. 2 FAA vide order dated 26/2/2019 allowed his appeal and directed the respondent no 1 PIO to issue the information to the appellant, free of cost within 15 days from the date of the order as per the original application dated 20/12/2018.
5. It is the contention of the appellant that inspite of the said order, since the said information was not furnished to him by PIO as such he being aggrieved by the action of respondent PIO is forced to approach this commission on 22/4/2019 in his 2<sup>nd</sup> appeal as contemplated u/s 19(3) of RTI Act, thereby seeking relief of directions to PIO to furnish the information as also seeking penalty for not giving information within time.
6. Notices were issued to both the parties. Appellant appeared in person. Respondent PIO Shri Prataprao Gaonkar was present who filed his reply on 20/6/2019 alongwith the enclosures. The copy of the same was furnished to the appellant.
7. Arguments were advanced by the parties.
8. It is the contention of the appellant that each time when he visited office of PIO he has been informed by the concerned clerk that the mutation file bearing no. 44196 under survey No. 65/10 of Village Colva, Salcete-Goa is not available/not traceable. It was further submitted by the appellant that during the course of the hearing before the first appellate authority, the representative /UDC of the respondent PIO was present and since no reply was filed by the respondent PIO, Respondent no. 2 the first appellate authority passed an order on 26/2/2019 allowing his appeal .
9. It is his further contention the respondent No. 1 PIO is not serious in complying with the provisions of RTI Act and also did not

bother to comply with the order of first appellate authority. He further submitted that lot of hard ship has been caused to him in pursuing the RTI application. He further submitted that Respondent No. 1 PIO neither made any efforts to search the said missing file.

10. It is the contention of the Respondent PIO that then PIO Shri Joao B. Fernandes vide letter dated 4/1/2019 have provided information with Respect to point no. 3 and with respect to point 1 and 2, it was informed that the mutation file No. 44196 of Colva village is not available in their office records. It is his further contention that whatever information available on record have been furnished to the appellant and all the efforts are been made by him to trace the said mutation file and memorandum dated 30/7/18 was issued to Talathi of Colva to furnish the said mutation file bearing No. 44196 of Colva village however the Talathi have reported vide letter dated 2/8/2018 that he said file is not available in the office record . He further submitted that mutation file is pertaining to the year 2011 and then Jt. Mamlatdar-I Shri Madhu Narvekar had duly certified the mutation entry on 2/2/2012 with respect to the above mutation file pertaining to survey No. 65/10 of village colva. He further submitted that despite of his personal efforts till date the said file is not available and/or not traceable in office records
11. I have scrutinised the records available in the file and considered the submission of parties.
12. It is the contention of then PIO Shri Joao B. Fernandes and also of present PIO that the till date the mutation file bearing NO. 44196 of village Colva pertaining to survey No. 65/10 of village Colva, Salcete Goa is not available and not traceable in their office record despite of through search. The information sought

reported to be of year 2011-2012. Within a span of few years the said is reported to be not available . 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 the 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 the ground of "non availability of records "is not qualified to be exempted u/s 8 of the RTI act.

13. The Hon'ble 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 ".

14. Yet in another decision the Hon'ble High Court of Bombay in writ petition No. 6961 of 2012; Vivek Kulkarni V/S State of Maharashtra has observed that

“ The fact that the said public records is not available was serious .It amounts to deny information to the citizen in respect of the important decision of the State and in such situations it was mandatory for public authority to set criminal law in motion as the documents could not be traced within stipulated time”.

15. Considering the above position and the file/documents as sought by the appellant at point No. 2 are still not available now, I am unable to pass any direction to furnish information at point No. 2 as it would be redundant now. However that itself does not absolve the PIO or the public authority concerned herein to furnish the information which is not exempted to the appellant unless the public authority sets the criminal law in motion and fixes responsibility for the loss of records and take action against the officers/official responsible for the loss of records. It appears that no such exercise was done by the public authority concerned herein and therefore the appropriate order is required to be passed so that the liability are fixed and records are traced.

16. In the above given circumstances and in the light of the discussion above , I dispose of the appeal with following order;

#### **ORDER**

1. Appeal partly allowed allowed.
2. The Collector of South-Goa, District at Margao or through his authorized officer shall conduct an inquiry regarding the said missing of file/documents of Mutation file bearing no. 44196 of Colva village, under survey No.65/10 of revenue village Colva, Salcete-Goa and to fix the

responsibility for missing said file/documents. He shall complete such inquiry within 4 months from the date of receipt of this order by him. The right of the appellant to seek the same information from the PIO free of cost is kept open, in case the said file is traced. The copy of such report shall be furnished to the appellant.

3. 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.
4. The copy of the order shall be sent to the Collector of South-Goa, District at Margao for information and for appropriate action.
5. Rest prayers are disallowed.

Appeal proceedings disposed and closed accordingly.  
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