

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

Appeal No. 181/2019/SIC-I

Mr. Ulhas N. Lawande
H.No. 532 Vady,
Candolim Bardez Goa.

....Appellant

V/s

1) The Public Information Officer,
Town & Country Planning Department ,
3rd floor, Govt. Bldg Complex,
Mapusa Goa.

2) First Appellate Authority,
Senior Town Planner (North),
Town & Country Planning Department ,
3rd floor, Govt. Bldg Complex,
Mapusa Goa. 403507.

.....Respondents

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

Filed on: 12/06/2019

Decided on:23/09/2019

ORDER

1. The appellant, Mr. Ulhas Lawande has filed present second appeal against Respondent No. 1 Public Information Officer (PIO) of Town and country Planning Department at Mapusa -Goa and against Respondent No. 2 the First Appellate Authority (FAA) praying that the information as requested by him in his application dated 26/9/2018 be furnished to him correctly and completely.
2. The brief facts leading to present appeal as stated in memo of appeal are that:-
 - a)The appellant vide his application dated 26/9/2018 had sought for the papers/maps relating to No.DB/6013/5096/82/ dated 6/11/1982 Village Candolim Taluka, Bardez Goa pertaining to Survey No. 142/1. The said information was sought from the Public Information Officer (PIO) of the office of Town and country Planning

Department at Patto, Panajim-Goa by the appellant in exercise of appellant's right u/s 6(1) of Right to Information Act, 2005.

b) It is contention of the appellant is that his above application was transferred to the Respondent no. 1 PIO of the office of TCP, Mapusa by the PIO of Town and Country Planning department at Panajim vide office note dated 26/9/2019.

c) It is also contention of the appellant that he received letter from the PIO of Town and Country Planning Department at Panajim on 10/10/2018 denying him the information on the ground that the information as sought is not available in records of the Public authority as the concerned file is not traceable. Vide said letter it was further informed to him that his RTI application was transferred to the PIO of Town and Country Planning Department at Mapusa vide letter No.21/22/TCP(HQ) /PIO-6/12/2018/1988/ dated 26/09/2018.

d) It is also contention of the appellant that he had also filed separate application to the Respondent no. 1 PIO under the RTI Act seeking the same information on 20/9/2018 and both his RTI application dated 20/9/2018 and dated 26/9/2018 were responded by a common reply on 3/10/2018 interms of sub-section (1) of section 7 informing him that file bearing No. DB/6013/5096/82 dated 6/11/1982 is not available in this office records, hence the information sought by him cannot be furnished.

e) It is contention of the appellant that as the information as was sought by him was not furnished to him and being aggrieved by such an above replies of Respondent no. 1 PIO and that of PIO of Town and Country Planning Department at Panajim, he filed first appeal interms of

sub section (1) of section 19 of RTI Act on 5/11/2018 before the Respondent No. 2 Senior Town Planner at Mapusa-Goa being First appellate authority which was registered as appeal No. 32/2018.

f) It is contention of the appellant that respondent No. 2 FAA vide order dated 31/12/2018 partly allowed his appeal and directed Respondent PIO to once again make serious efforts to the APIO or his record keeper to locate the file under reference and give definite answer in this regards to the appellant as to where the records could be probably lies so then appellant can approach the concerned office/authority .

g)It is contention of the appellant that after the order of FAA received a reply dated 20/3/2019 informing him once again file bearing No. DB/6013/5096/82 dated 6/11/1982 in not available in this office records, hence the information sought by him cannot be furnished.

h) It is the contention of the appellant that he being aggrieved by such an action of the Respondent No. PIO and of PIO of Town and Country Planning Department , Panajim has been forced to approach this Commission on 12/6/2019 in the second appeal as contemplated under sub-section (3) of section 19 of RTI Act, 2005.

3. In this background the present appeal has been filed on the grounds raised in the memo of appeal with the contention that information is still not provided and seeking order from this Commission for providing him authenticated copies of the documents/information as sought by him.

4. The matter was taken up on board and listed for hearing. In pursuant to notice of this commission appellant was present in person. Respondent No.1 PIO Shri S.P. Surlikar was only present

during initial hearing on 4/7/2019 . Respondent no. 2 opted to remain absent.

5. An affidavit of Respondent no. 1 PIO Shri S.P. Surlekar was submitted with the registry of this office on 29/8/2019, which was inwards vide entry No. 1357. Copy of the same was furnished to the appellant.
6. During the hearing on 16/9/2019 the appellant submitted that he has sought the said information in a larger public interest and the said is required by him on urgent basis in order to produce it before Hon'ble District Court. He further submitted that the open space in the said survey Number was allotted to make garden but now he has learnt that the same would be reserved for parking. The said arrangement are done by not following the proper procedure hence he intends to redress his grievances before the competent forum. He further submitted that that he has no personal interest or gain on the entire issue and he is taking up the issue in the larger public interest. He further submitted that the Xerox copy of the NOC (No.VP/41/5/797/83-84 dated 26/9/1883 and plan) was given to him by Candolim Village Panchayat and the same bears the signature of Chief Town Planner, Panajim. He further submitted that the Respondent PIO was not serious in locating the file and have mechanically replied that the said file is not available in the office record . He further submitted that he is a senior citizen and lots of hard ship has been caused to him in pursuing the RTI application. 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.
7. Vide affidavit, dated 28/8/2019 Respondent PIO Shri S.P. Surlekar submitted that they have made serious efforts through APIO, a record keeper to locate the file under reference and

order to that effect was issued to the records section on 14/2/2019, however the officials and concerned dealing hand Shri B.S. Divkar despite of his extreme efforts could not locate the said file and since the said file is not on records in their office, hence he informed the appellant that the file is not available in office records.

8. I have scrutinised the records available in the file and considered the submission of parties.
9. Vide affidavit dated 28/8/2019 the Respondent PIO Shri S.P.Surlekar at para 3 have admitted that the information sought pertaining to the papers/Map relating to file bearing No. DB/6013/5096/82 dated 6/11/1982 in survey No. 142/1 of Village Candolim, Taluka Bardez-Goa and that the said information is not available and not traceable in their office record despite of through search.
10. On perusal of the reply dated 10/10/2018 given by the PIO of Town and country planning Department at Panajim relied by appellant it could reveal that the information could not be furnished since the file was not traceable .
11. In the nutshell both the PIOs i.e PIO of Panaji and PIO of Mapusa of the said Public authority have reported that the information sought is not available as the file is not traceable in their office .
12. It appears that the file bearing No. DB/6013/5096/82 dated 6/11/1982 in survey No.142/1 of Village Candolim Taluka Bardez-Goa was existed at some point of time in the records of the Public authority concerned herein which is reported now as not traceable. It is not the contention of the PIO of Town and Country Planning Department at Panajim 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. The Respondent

No.1 PIO of Town and Country Planning Department have affirmed on oath that the said file is not recorded in their office. In this case it is only the lapse and failure of the public authority to preserve the records and to maintain inventory of the files 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 in larger public interest are still not available now, 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 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 Chief Town Planner of Town and Country Planning Department at Panajim, or through his authorized officer shall conduct an inquiry regarding the said missing of file/documents of file bearing No. DB/6013/5096/82 dated 6/11/1982 in survey No. 142/1 of Village Candolim Taluka Bardez-Goa and to fix 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 inquiry 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 Chief Town Planner of Town and Country Planning Department at Panajim, for information and for appropriate 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