

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

Appeal No. 199/2019/SIC-I

Mr. Heraclio Fernandes,
Resident of H. No. 293/4,
3rd ward, Colva, Salcete-Goa.

.... Appellant

V/s

1) The Public Information Officer,
Office of the Village Panchayat,
Colva-Vanelim –Gandaulim-Sernabatim,
Colva, Salcete-Goa..

.....Respondent

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

Filed on: 25/06/2019

Decided on:21/10/2019

ORDER

1. In exercise of the right u/s 6 (1) of RTI Act, 2005 the appellant Mr. Heraclio Fernandes filed his application on 2/2/2019 seeking certain information from the Public Information Office (PIO) of Village Panchayat Colva, Salcete on six points as stated there in his said application pertaining to his House bearing No. 33/2 assessed in the name of Shri Anthony L. Fernandes, resident of 1st ward Colva, Salcete-Goa.
2. It is the contention of the appellant that his said application was not responded nor information was furnish to him as per section 7(1) of RTI Act, 2005 within a period of 30 days ,and as such deeming the same as rejection he filed first appeal on 11/3/2019 before the Block Development officer at Margao-Goa being First Appellate Authority (FAA) in term of section 19(1) of RTI Act, 2005.
3. It is a contention of appellant that after he filed first appeal, he received a letter from Respondent dated 30/3/2019 wherein information at point No. (d),(e) and (f) as sought by him was furnished to him and the information at point no. (a) (b) and

(c) was denied to him on the ground that the same was not found/available in Panchayat records.

4. It is a contention of the appellant that Respondent no. 2 FAA after hearing both the parties finally disposed his first appeal by order dated 11/4/2019 directing the respondent to furnish the information to the appellant within 10 days specifying that the documents is found or not available in records of Panchayat.
5. It is the contention of the appellant that in spite of the said order dated 11/4/2019, the respondent failed to furnish the information and comply with the order dated 11/4/2019.
6. It is the contention of the appellant that he being aggrieved by the action of the respondent herein is forced to prefer the present appeal in terms of section 19(3) of RTI Act, 2005 on the grounds raised in the memo of appeal.
7. In this background the second appeal came to be filed on 22/6/2019 by the appellant with a contention that the complete information is still not furnished and seeking directions from this Commission to PIO to furnish him the information immediately and for invoking penal provisions as against Respondent PIO .
8. The matter was taken up on board and was listed for hearing. In pursuant to the notice of this commission appellant was present alongwith Advocate M. Mascerance . Respondent Ms. Sharda Velgekar was present during initial hearing and sought time to file reply and thereafter remained absent. Since it was brought to notice of this commission by the appellant that Ms. Sharda Velgekar has been transferred and new PIO has been joined duty a fresh notice was issued once again, despite of same the present PIO did not bother to appear and did not file his say to the appeal proceedings as such this commission

presumes and hold that Respondent has no any say to be offered and the averment made by the appellant are not disputed by them .

9. On account of continuous absence of Respondent this commission had no any other option then to hear argument of the appellant and to decide the matter based on the records available in the file.
10. It is the contention of the appellant that in resolution No. 3/51 dated 5/1/2006 which was provided to him at the information at point (f) to his RTI applications clearly states that the application of Shri Anthony L. Fernandes is placed before the Panchayat meetings which means, there was application of issuance of house number which now have been denied to him as not found in Panchayat records. He further submitted that without there being construction licence and approved plan, house number cannot be issued and as such there has to be a construction licence and occupancy certificate. It was further submitted that affidavit/undertaking are taken by the Panchayat whenever house numbers are issued hence the contention of the Respondent PIO that the same is not found in Panchayat records is unacceptable to him.
11. I have scrutinized the records available in the file also considering the submissions of the appellant.
12. It appears that the information sought pertains to the year 2006. On perusal of the minutes of the meeting specially the resolution furnished to the appellant by the respondent, there is a reference of application of Shri Anthony L. Fernandes for separate house number within the existing house bearing No. 33 and same being was placed in the meetings, as such the said information was existed at some point of time in the records of the Public authority concerned herein which is reported now as not found/available in the Panchayat records.

No where it is 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 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 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.
2. The Director of Panchayat or through his authorized officer shall conduct an inquiry regarding the said missing of documents i.e (a) application for issuance of house number based on which house bearing no.33/2 has been assessed for the purpose of tax in the records

of Village Panchayat Colva in ward No.9.(b)Construction licence along with approved plan and occupancy certificate of house bearing No. 33/2 (c) certified copy of affidavit undertaking if any 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/documents are 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 Director of Panchayat 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