

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

Appeal No. 282/2019/SIC-I

Mr Shailesh K. Miskin,
R/o H.No. 23/11,
Khorlim Mapusa Goa.

....Appellant

V/s

1) The Public Information Officer,
Directorate of Sports and Youth Affairs,
Government of Goa,
Office at Campal , Panaji-Goa.

2) First Appellate Authority,
Directorate of Sports and Youth Affairs,
Office at Campal, Panaji-Goa.

.....Respondents

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

Filed on:30/08/2019

Decided on: 17/12/2019

ORDER

Brief facts leading to present appeal as put forth by the Appellant Shri. Shailesh K. Miskin are as under :-

1. In exercise of the right u/s 6 (1) of RTI Act, 2005 the appellant Mr. Shailesh K. Miskin filed two application both dated 8/03/2019 under inward number 9885 and 9884 respectively seeking certain information from the Respondent No.1 Public Information Officer (PIO) of the Office of Directorate of Sports and Youth Affairs at Panajim-Goa on several points as stated there in his said application pertaining to various tenders floated and sports good procured by the Directorate of Sports and Youth Affairs.
2. It is the contention of the appellant that since the Respondent PIO did not furnish any information on his said application within the mandatory period of 30 days as such he visited the office of Respondent No. 1 and it was during that conversation with the Respondent No. 1 a letter dated 9/04/2019 was hand

delivered to him and he was requested to identify the records so that the information could be provided to him. It is contention of the appellant that such an act was dilatory ploy of Respondent No. 1 and that Respondent No. 1 systematically refused and neglected to furnish the information as sought by him.

3. It is the contention of the appellant he being not satisfied with the reply of the Respondent No. 1 PIO and deeming the same as rejection, he filed first appeal on 2/05/2019 before the Respondent No. 2 Directorate of Sports and Youth Affairs at Panjim being First Appellate Authority (FAA) in term of section 19(1) of RTI Act, 2005.
4. It is a contention of the appellant that Respondent no. 2 First Appellate Authority (FAA) did not bothered to disposed his first appeal as required under the law.
5. It is the contention of the appellant that he being aggrieved by the action of both the Respondents herein and as no information was received by him as was sought, he has been forced to prefer the present appeal in terms of section 19(3) of RTI Act, 2005.
6. In this background the second appeal came to be filed on 30/08/2019 by the Appellant with a contention that the information is still not furnished and seeking directions from this Commission to both the Respondents to furnish him the information immediately as sought by him vide two application date 8/3/2019 and also seeking relief for invoking penal provision u/s 20 against both the respondent u/s 20 of RTI Act 2005.
7. 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 Atmaram Desai. Respondent No. 1

PIO Gurudas Vernekar was present. Respondent No. 2 was represented by Mrs Shilpa Shirodkar.

8. Reply filed by Respondent no.1 PIO and Respondent no.2 first appellate authority on 15/10/2019 respectively. The copies of the same were furnished to the appellant.
9. In the course of the hearing before this commission the Respondent No.1 PIO showed his willingness to furnish the information and accordingly same was furnished to the appellant vide letter dated 1/11/2019 and vide letter dated 25/11/2019 alongwith the documents which was acknowledged by the appellant .
10. Respondent No. 1 PIO also filed interim reply on 25/11/2019 seeking time for tracing the files. Affidavit also filed by Respondent No.1 PIO on 10/12/2019 affirming that their Department has tried to trace the movement of file pertaining to point no. 6,12,14,15,16 and 22 of the application under inward No. 9884 dated 8/3/2019 on the basis of inward and file movement registered however the said file could not be tracked in the office and all possible efforts were made to locate the same.
11. Argument were canvassed by both the parties.
12. It is the contention of the appellant that he has sought the said information in a larger public interest and the said information was required by him to put up his grievances with the competent forum and as such he is entitled for said information. It was further submitted that the contention of the Respondent PIO that the same is not found in records/not traceable is unacceptable to him.
13. The Respondent No.1 PIO submitted that whatever available information have been furnished to the appellant and all the

queries sought by the appellant in his two RTI application have been duly answered by him. It was further submitted that the information pertaining to point No. 6,12,14,15,16,and 22 could not be furnished as the said files could not be tracked in the office despite of possible efforts were being made to locate the same.

14. I have scrutinized the records available in the file also considered the submissions of both the parties .
15. In the present case the appellant is trying to seek the documents at point No. 6,12,14,15,16,and 22 such as the (i)copy of the note processed by the Director of Sports and Youth Affairs, Sports section dated 2/6/2015 in response to note received from President , Harmal Cricket Club bearing No. 06/HCC/15-16 dated 30/4/2015, (ii). copy of the note bearing No.DSYA/SW/SCHEMES/ISSUE/2014-15 processed by the Director of Sports and Youth Affairs, Sports section dated 10/08/2015 in response to note received from the principal ,Shradhanand Vidhyalaya Poinguin Canacona (iii) copy of the note processed by Director of Sports and Youth Affairs, Sports section bearing No. DSYA/SW/SCHEMES/ISSUE/ 2014-15 dated 24/11/2014, (iv) copy of the note processed by Director of Sports and Youth Affairs, Sports section bearing No. DSYA/SW/SCHEMES/ISSUE/ 2015-16 dated 07/07/2015 (v) copy of the note processed by the Director of Sports and Youth Affairs, Sports section dated 22/07/2015 in response to the letter from the President , Boxer boys sports and cultural club Parse and (vi) copy of the note processed by the Director of Sports and Youth Affairs, Sports section dated 2/3/2015 in response to note received from Smt. Savita Tawadkar Headmistress of Balram Primary school.
16. The said information was bound to have been 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 office 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 which has lead to non traceability of the file/documents. 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.

17. 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".

18. 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”.

19. Considering the above position and the file/documents as sought by the appellant at point No. 6.12,14,15,16and 22 are still not available now, I am unable to pass any direction to the respondents to furnish permissible information as per law 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.

20. The RTI Act is an beneficial legislation, which came into existence for bringing transparency in the affairs of public authorities. Hence the time limit is fixed to provide the information by PIO within 30 days and to dispose the first appeal maximum within 45 days . In the present case, the part of the information came to be furnished to the appellant during the present proceedings. There is delay in furnishing information. The records reveals that no orders were passed by the Respondent No. 2 FAA within stipulated time of 30 days. Both the Respondent have not acted with conformity with the provisions of RTI Act.

21. The PIO and first appellate authority must introspect the non furnishing of the correct and complete information lands the citizen before the first appellate authority and also before this commission resulting into unnecessary harassment of the Common man which is socially abhorring and legally impermissible.
22. Nevertheless the appellant did not pressed for application dated 8/3/2019 under inward No. 9885 so also has gracefully did not pressed for invoking penal provisions against Respondents. This commission by considering this is as an first lapse on the part of both the Respondents, takes a lenient view in the present proceedings and both the Respondents are hereby directed to be vigilant henceforth while dealing with the RTI matters and any lapses found in future shall be viewed seriously.
23. In the above given circumstances and in the light of the discussion above , I dispose of the appeal with following order;

ORDER

1. The Director of Sports and Youth Affairs, Panajim-Goa or through his authorized officer shall conduct an inquiry regarding the said missing of documents at point no. 6,12,14,15,16 and 22 of the application 8/3/2019 under inward No. 9884 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 copy of such inquiry report shall be furnished to the appellant. The right of appellant to seek the permissible information from the PIO is kept open in case of said file is traced .
2. The copy of the order shall be sent to the Director of Sports and Youth Affairs, Panajim-Goa, 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