

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

Appeal No. 293/2019/SIC-I

Mr. Balkrishna Gawas,
H.No.179, Dandoswada, Mandre,
Pernem Goa.

....Appellant

V/s

- 1) The Public Information Officer,
The Director,
Directorate of Accounts,
Panaji-Goa.
- 2) The Public Information Officer,
Office of the Chief Engineer,
Water Resources Department,
Sinchai Bhavan, Alto Porvorim-Goa.
- 3) The Executive Engineer and PIO,
Work Division VIII, Water Resources Department,
Karaswada, Mapusa Goa.
- 4) First Appellate Authority,
Office of the Superintending Engineer,
Central Planning Organisation,
Water Resources Department,
Sinchai Bhavan, Alto Porvorim-Goa.

.....Respondents

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

Filed on:18/9/2019

Decided on:27/11/2019

ORDER

Brief facts leading to present appeal are as under :-

1. In exercise of the right u/s 6 (1) of RTI Act, 2005 the appellant Mr. Balkrishna Gawas filed his application on 3/4/2019 seeking certain information from the Respondent No. 1 Public Information Office (PIO) of Directorate of Accounts, Panajim Goa on Seven points as stated there in his said application pertaining to one Shri Parshuram Ajgaonkar, Asst. Engineer working for Water Resources Department SDIII, WD VIII, Karaswada -Goa.

2. It is the contention of the appellant that his said application was transferred by respondent no. 1 to the Respondent No. 2, PIO of the office of Chief Engineer Water Resources Department, Sinchai Bhawan, Alto Porvorim-Goa vide letter dated 17/4/2019 in terms of section 6(3) who in turn again vide her letter dated 30/4/2019 transferred his application in terms of section 6(3) to the respondent No. 3 Executive Engineer and PIO of works Div. VIII, Water Resources Department, Karaswada-Goa with a request to furnish requisite information to the applicant directly under intimation to their office .
3. It is the contention of the appellant that his said application was responded by Respondent No. 3 on 27/8/2019 in terms of sub-section (1) of section 7 of RTI Act, 2005 informing him that the documents requested by him vide the RTI application dated 3/4/2019 is not available in their office records and as such deeming the same as rejection, he filed first appeal on 3/6/2019 before the Respondent no. 4 Superintending Engineer, Water Resources Department, Sinchai Bhawan, Alto Porvorim-Goa being First Appellate Authority (FAA) in terms of section 19(1) of RTI Act, 2005.
4. It is a contention of the appellant that Respondent no. 4 FAA after hearing both the parties finally disposed his first appeal by order dated 27/6/2019 by coming to the findings the information sought pertains to a Gazetted officer and the same is maintained by the Director of Accounts, Panajim, North-Goa and the direction were given to the Respondent no. 1 and 2 to guide the appellant in the matter .
5. It is the contention of the appellant that he being aggrieved by the action of all 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 18/9/2019 by the appellant with a contention that the information is still not furnished and seeking directions from this commission to all Respondents to furnish him the information immediately.
7. The matter was taken up on board and was listed for hearing. In pursuant to the notice of this commission appellant was present in person . Respondent No. 1 was represented by Shri Naresh Kankonkar and by Sidha Kurtikar. Respondent No. 2 Mrs Nayan Morajkar was present along with then PIO Ms. Geeta Nagvekar. Respondent No. 3 Shri M.K.Prasad was present along with Ramadi Rao. Respondent No. 4 was represented by Shri Parmeshwar K.
8. Reply filed by Respondent no.1 and Respondent no.3 on 25/10/2019 and by Respondent no. 2, on 20/11/2019 alongwith enclosures. No reply came to be filed by Respondent No. 4. The copies of the same alongwith enclosures were furnished to the appellant.
9. Argument were canvassed by both the parties .
10. It is the contention of the appellant that he has sought the said information in a larger public interest as according to him the said Shri Parsuram Ajgaonkar, Asst. Engineers of WRD has produced false and manipulated documents in order to secure his job. It is his contention that said Parshuram Ajgaonkar is paid from the public exchequer and as such he is entitled for his information. It was further submitted that the contention of the Respondent PIO that the same is not found records is unacceptable to him .
11. Vide reply Respondent no. 1 admitted of having received the application dated 3/4/2019 of the appellant under RTI Act and contended that since the information at point No. 1 to 7 was

not held by his public authority, the Respondent vide letter No. DA/Admn/RTI/19-40/(36/2019)/243 dated 17/04/2019 transferred the said application u/s 6 (3) of the RTI Act, 2005 to the Respondent No. 2 i.e the PIO of the office of Chief Engineer, WRD, Sinchhai Bhawan, Alto Porvorim- Goa being the appointing authority of Shri Parshuram Ajgaonkar. It was further contended that the order and the conclusion drawn by the Respondent no. 4 first appellate authority of WRD that the personal information in respect of the Gazetted Officer is maintained by the Director of Account is not correct. It was further contended that the Director of Account does not carry out the process of recruitment in case of gazetted officer of other Department but only receive the service book of the officers upon their promotion to their gazetted post and not their personal documents. It was further contended that the Executive Engineer,WDVII, Goa Tillari irrigation Development corporation, Dhargal, Pernem-Goa vide letter dated 14/3/2006 had forwarded only service book volume I and II alongwith leave account of Shri Parshuram Ajgaonkar when he was promoted as Assistant Engineer and in support of his above contention he relied upon the relevant documents.

12. Vide reply the Respondent no. 2 admitted of having received the application dated 13/2/2019 and having being transferred the said application to respondent no. 3 interms of section 6(3)(i) and (ii) of RTI Act with a request to furnish the requisite information to the appellant. It was further contended that the reply was furnished to the appellant by Respondent No. 3 saying that the information requested is not available in their office. It was further contended that respondent No.2 and 3 had brought to the notice of respondent No. 4 first appellate authority that since the information sought was pertaining to

gazetted officer it was maintained by Directorate of Account, Panaji and accordingly by considering their say the order was passed by Respondent no. 4.

It was further contended that the Respondent no. 2 had directed to the Head Clerk-II of the office of Chief Engineer WRD Sinchai Bhawan, Alto Provorim-Goa to provide the information sought by the appellant in respect of documents relied by Shri Parshuram Raghu Ajgaonkar at the time of recruitment and the Head Clerk-II stated that the information requested by the appellant is of year 1984 and is almost 35 years old and he joined the office on 16/1/2019 and it is beyond his knowledge.

It was further contended that the Head Clerk-II have made every possible efforts to locate the records with the help of labour on daily wages and it is not traceable in the office records and there is an possibility of the records might have got misplaced while shifting office from Panjim to Porvorim. It was further contended that once the information is traceable the same may be issued to the appellant . The PIO also relied upon documents in support of her case.

13. The Respondent No.3 vide his affidavit in reply dated 25/10/2019 contended that information/documents sought by the appellant is not available in the office of the Executive Engineer, Work Div VIII , WRD, Karaswado, Bardez-Goa
14. I have scrutinized the records available in the file also considered the submissions of the appellant.
15. In the nutshell it is the case of respondent No.1,2,and 3 that information sought by the appellant is not available and does not exist in their office records.
16. In the present case the appellant is trying to seek the documents such as the date of application, Certified copy of

Degree certificate, Diploma Certificate, Cast certificate, information pertaining to category of the appointment of the Asst. Engineer Shri Parshuram Ajgaonkar working for the Water resources Department. Some of the documents sought might have been submitted by the said Asst. Engineer for seeking the said post whose salaries are paid from a public exchequer. The said documents ought to have been on the record of the public authority concerned herein i.e. Respondent No. 2. Whether the appellant is entitled for the said information or not is an different issue and this commission cannot presently go into the merits of the RTI application and cannot be dealt now, as even the appointing authority of said Asst. Engineer i.e Respondent no.2 and 3 have reported that those documents are not available and does not exists in their office records.

17. The said information was bound to 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.
18. 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 “.

19. 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”.

20. 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 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.

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

ORDER

1. The Chief Engineer of Water Resources Department Sinchai Bhawan, Alto Porvorim-Goa or through his authorized officer shall conduct an inquiry regarding the said missing of documents 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.
2. The copy of the order shall be sent to the Chief Engineer of Water Resources Department Sinchai Bhawan, Alto Porvorim-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