

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

Appeal No.299/2019/SIC-I

Mr. Domnic Noronha,
H. No. 92, Dandvado Sirlim,
Salcete-Goa Appellant
v/s
Public Information Officer,
Office of the Mamlatdar of Salcete,
Margao-GoaRespondent

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

Filed on: 4/10/2019

Decided on:23/12/2019

1. The brief facts leading to present appeal as put-forth by the Appellant Shri. Domnic Noronha herein are as under:-
 - a)The appellant vide his application dated 10/7/2019 had sought for the information in respect of mutation No. 249, of survey No. 94/2, of Village Cavelossim, Salcete Taluka. The said information was sought from the Public Information Officer (PIO) of the Office of Mamlatdar at Margao-Goa by the Appellant in exercise of his right u/s 6(1) of Right to Information Act, 2005.
 - b) It is also contention of the appellant that his above application was not responded by the Respondent Public Information Officer (PIO) interms of sub-section(1) of section 7 of RTI Act , 2005 neither provided him the information as sought by him within stipulated time of 30 days as contemplated under the Act.
 - c) It is contention of the appellant that as the information as was sought by him was not furnished to him, despite he visiting the office to get the concerned information as such he filed first appeal in terms of sub section (1) of section

19 of RTI Act before the Dy. Collector and SDO Margao being First Appellate Authority (FAA).

d) It is contention of the appellant that he received communication from the FAA on 22/8/2019 informing him that with reference to his applications dated 22/8/2019 , he has already passed order bearing No. FAA-DC/SAL/RTI-APPL/03/2017-860 dated 6/3/2017 directing Mamalatar of Salcete to provide the information and since the above order is not complied by PIO, the appellant may approach competent authority for second appeal.

e) It is the contention of the appellant that he being aggrieved by such an action of the PIO and of first appellate authority, has been forced to approach this Commission in the second appeal as contemplated under sub-section (3) of section 19 of RTI Act, 2005.

2. In this background the present appeal has been filed on 4/10/2019 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 information as sought by him and also for invoking penal provisions .
3. The matter was taken up on board and listed for hearing. In pursuant to notice of this commission appellant was present in person. Respondent PIO Shri Prataprao Gaonkar was present .
4. Reply was filed by the Respondent on 27/11/2019 alongwith the enclosures. Copy of the same was furnished to the appellant. Since the Respondent PIO contended that the mutation file bearing No. 249 of survey no. 94/2 of Village Cavelosim, Salcete Taluka is not available and not traceable in the records maintained in their respondents office, he was directed to affirm the said fact by way of affidavit. Accordingly affidavit was filed by Respondent PIO on 23/12/2019 affirming the said facts and

also enclosing form I and XIV pertaining to Survey No. 94 sub Division No. 2 of Village Cavelossim of Salcete Taluka. Copy of Affidavit of PIO could not be furnished to Appellant on account of his absence.

5. Written submission were also filed by appellant in reference to the reply given by the PIO on 27/11/2019.
6. It is the contention of the appellant that initially he has sought the information pertaining to above subject matter vide his application dated 9/12/2016 and the PIO then had informed him that the said mutation file is not traceable in Village Panchayat records and as such he had preferred first appeal pertaining to said application and the file was assured to be found and held in back office and as such the said appeal was closed assuming there was no issue. It was further contended that after continuous and longstanding assurances, giving various excuses, the file for the requested information since were not provided, hence he filed fresh application on 10/7/2019, placing all the previous facts and action requested if the information is not available . It was further contended that the PIO continued with the same trend of not providing information and hence he filed first appeal and the FAA vide letter dated 22/8/2019 directed him to approach competent authority since the PIO has not complied with a previous referred order dated 6/3/2017. He further contended that the FAA has not heard the matter and disposed his first appeal arbitrarily without issuing notices to both the parties .
7. The appellant further contended that office of the PIO besides knowing the facts of missing records since 2017 has never taken steps to create the public records
8. It was further contended by Appellant that he had sought the said information in a larger public interest and said is pertaining to his

ancestral holdings and the said is required by him on urgent basis in order to take legal recourse and that he had mentioned the said fact in his RTI application dated 10/7/2019.

9. It was further contended that the file was initially shown to him by one Mr. Pradeep on back office, who claimed that there were more details involved in the file and he would be visiting Cavelossim Panchayat to get the details from the concerned Talathi.
10. 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 lots of hard ship has been caused to him in pursuing the RTI application. It is his further contention that the Respondent No. 1 PIO is not serious in complying with the provisions of RTI Act and no FIR till date has been filed against the said missing records
11. Vide reply dated 27/11/2019 and vide affidavit dated 23/12/2019 the PIO contended that on receipt of the RTI application direction were given to respective Talathi to locate the said file as the said mutation was carried out 20 to 25 years before however the said Talathi could not locate the said file and appellant was informed accordingly vide letter bearing outward no. 4490 by then PIO.
12. It was further contended that when the appellant filed RTI application dated 10/7/2019 informing that the staff member of their office had initially shown the file as such he had issued direction to ex-staff/CI who was presently posted at the office of Mamlatdar, Sanguem directing for clarification into the aforesaid letter dated 10/7/2019 and during interaction with Appellant since it was noticed that those files will be available with the village Panchayat Cavelosim and not with mutation cell, as such information was sought from said Talathi who vide his reply

dated 23/9/2019 informed him that the said file is not available as per records maintained as per inventory list in his office and also physically verifying in the old stored documents . Accordingly he (PIO) informed to the appellant vide his letter dated 15/10/2019 that the file is not available in office records and in support of his case he relied upon his reply dated 15/10/2019 addressed to Appellant and the letter dated 23/09/2019 addressed to Mamlatdar by the Talathi.

13. I have scrutinised the records available in the file and considered the submission of parties.
14. Vide reply and affidavit, the Respondent PIO Shri Pratap Gaonkar have admitted that the said information is not available and not traceable in their office record despite of through search.
15. The form I and XIV relied by the Respondent PIO reveals that the said was issued based on the mutation file bearing No. 249, survey No. 94/2 of Village Cavelossim Taluka, Salcete-Goa. Hence based on the above documents, it appears that the Mutation file bearing No. 249, pertaining to survey No. 94/2 of Village Cavelosim Taluka Salcete-Goa was existed at some point of time in the records of the Public authority concerned herein which is reported now as not traceable.
16. 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. The Respondent PIO have affirmed on oath that the said file is not available and not traceable in the office records maintained by their Office despite of diligent efforts. 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.

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 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.
20. It is also seen from the records that the PIO and the FAA has not acted in conformity with the provisions of RTI Act. It is seen from the records that the application was filed by the appellant on 10/7/2019 which was required to be responded by 10/8/2019 but the records shows that it was responded only on 15/10/2019. There is a delay in responding the same.
21. It needs to mention that in every judicial proceedings, the principle of natural justice demands that both the parties should be heard. Non hearing of the appellant and the PIO in the first appeal has resulted into mischarge of justice there by depriving the opportunity to both the parties of substantiating their case. I find that the First Appellate Authority has committed a serious irregularity of not notifying the both the parties to substantiate their grievance. Thus, I find that the First Appellate Authority, has acted in total casual and mechanical manner. There is a gross violation of principal of natural justice. Such an conduct on the part of first appellate authority who is Quashi Judicial authority

was least expected. Hence the PIO and First Appellate Authority is here by admonished and are hereby directed henceforth to dispose the RTI matters in accordance with law.

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

ORDER

- a) 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. 249, survey No. 94/2 of Village Cavelosim Taluka Salcete-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.
- b) The Public authority concerned i.e. O/o. Mamlatdar of Salcete at Margao-Goa shall carry out the inventory of their records within 3 months and are hereby directed to maintain and preserve the records properly.
- c) The Public Authority concerned i.e. O/o. Mamlatdar of Salcete at Margao-Goa herein is hereby directed to comply with section 4 of Right to Information Act, 2005 within 3 months, if the same is not yet implemented.
- d) The copy of the order shall be sent to the Collector of South Goa at Margao and to first appellate authority, 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