

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

Appeal No. 293/2018/SIC-I

Shri Jawaharlal T. Shetye,
H.No.35/A,Ward No-11,
Khorlim Mapusa Goa.
Pincode-403 507

....Appellant

V/s

1) The Public Information Officer,
Mapusa Municipal Council,
Mapusa Goa-403507

2) First Appellate Authority,
Chief Officer,
Mapusa Municipal Council,
Mapusa-Goa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 05/12/2018

Decided on: 19/03/2019

ORDER

1. The brief facts leading to present appeal are that the appellant Shri Jawaharlal T. Shetye herein by his application dated 1/8/2018 sought certain information as stated therein from the Respondent No.1 Public Information Officer (PIO), office of Mapusa Municipal Council, Mapusa, Bardez-Goa Pertaining to (i) letter bearing No. 2/2/2016/DMA/PG/ Mapusa/Part/634 dated 31/5/2017 addressed to the Chief Officer of Mapusa Municipal Council , by Additional Director of Department of Urban Development (Municipal Administration), (ii) Information pertaining to certificate of income number EST/754/5663/06 dated 27/10/2016 issued in a name of Shri Vishwas G. Salgaokar, (iii) information pertaining to certificate of income bearing No. EST/ 6014/14 dated 1/8/2014 issued at the request of Shri Sudhir Rama kandolkar and (iv) certified copies of the minutes of the council meeting of the

Mapusa Municipal Council and the agenda of council meeting held on 31/7/2018. The said information was sought in exercise of his right under section 6(1) of RTI Act .

2. It is the contention of the appellant that his above application filed in terms of sub section 1 of section 6 was not responded by the Respondent no 1 PIO within stipulated time of 30 days and as such deeming the same as rejection, the appellant filed 1st appeal on 17/09/2018 before the Respondent no 2 Chief Officer of Mapusa Municipal Council being First appellate authority in terms of section 19(1) of RTI Act.
3. It is the contention of the appellant that the Respondent no. 2 FAA vide order dated 24/10/2018 allowed his appeal and directed the respondent no 1 PIO to issue the information to the appellant, free of cost within 7 days as per the original application dated 1/8/2018.
4. It is the contention of the appellant that inspite of the said order, since the said information was not furnished to him by PIO as such he being aggrieved by the action of respondent PIO is forced to approach this commission on 5/12/2018 in his 2nd appeal as contemplated u/s 19(3) of RTI Act, thereby seeking relief of directions to PIO to furnish the information as also seeking penalty and compensation for not giving information within time.
5. Notices were issued to both the parties. Appellant appeared in person. Respondent PIO Mr. Venkatesh Sawant was also present.
6. During the hearing on 14/2/2019 the PIO submitted that the information already furnished to the appellant on 12/2/2019 and the appellant also agreed of having received the same. The appellant submitted that he is satisfied with the information

furnished to him at point no. 1,2, 3 and 5. He further contended that information at point no. 4 have been partly provided to him and the names of the officers have not been furnished to him. He further submitted that he is not satisfied with the information at point "B" and at point "C" as sought by him vide his application dated 1/8/2018 as the same has been replied as "not available". Hence this commission directed the respondent PIO to file an affidavit clarifying what is meant by "not available" in view of the judgment passed by the Hon'ble High Court of Bombay at Goa branch in Writ petition No. 761 of 2018.

7. Accordingly the respondent PIO Venkatesh Sawant filed his affidavit on 6/3/2019 . Vide said affidavit it was contended that in pursuant to the directions of this commission to make efforts and to search the information /documents which is sought by the appellant at serial No. B-1, to 5, and C-1 to 3, a note was moved by him directing the concerned dealing hand and the Head clerk to search the said records pertaining to income certificate. It was further contended that the concerned dealing hand informed him in writing that those files were not handed over to him by Shivaji Kamble who was the incharge of the said files and despite of thorough search the records could not located by him and that the said files are still not traceable. It was further submitted vide said affidavit that the information provided vide letter dated 3/1/2019 pertaining to point B-1 to 5 and C-1 to 3 which was provided as "NOT AVAILABLE" may be read as "NOT TRACEABLE" for the reasons mentioned in a note dated 25/2/2019.
8. Arguments were advanced by both the parties.
9. It is the contention of the appellant that the PIO of the Mapusa Municipal Council is not serious in complying the provisions for RTI Act. He further submitted that the PIO does not respond

under section 7 of RTI Act and also does not bother to comply with the order of first appellate authority and in most of the cases the records speaks for itself that the PIO is habituated in adopting such tactics. He further submitted that lots of hardship caused to him pursuing his RTI Application and on that ground he pressed for invoking penal provision .

10. The appellant has also filed application dated 5/3/2019 with the registry of this commission with a prayer to direct respondent PIO to file police complaint with respect to information sought at B-1 to 5 and C-1 to 3.
11. It is contention of the Respondent PIO that whatever information available on record has been furnished to appellant and that the all the efforts being made by him to search and to locate the information at point No. B-1 to 5 and C-1 to 3 and the said is not traceable and as such he is unable to provide the same to the appellant.
12. The Respondent PIO have contended that the appellant is a chronic litigant and have been filing time and again RTI application and appeals with sinister motive of hampering the functioning of municipality and the PIO. The Respondent PIO further contended that the appellant has been abusing the system and has rather targeting the process of RTIs by keeping on filing the various RTI against the Mapusa Municipal council.
13. I have scrutinised the records available in the file and considered the submission of parties.
14. On perusing of the application dated 1/8/2018 filed interms of section 6(1) vis-a-vis the information furnished vide reply dated 12/2/2019, it is seen that the appellant at point No. 4 has sought the names and designation of the officials entrusted the duties of processing representation dated 31/5/2017, however in the

reply only part of the information is furnished i.e only the designation of the officials is specified and the name of the officers have not been furnished to the appellant .

15. It is seen that information sought at point no. B-1 to 5 was pertaining to year 2006 and information at point no. C-1 to 3 pertains to the Year 2014. The appellant has also placed on record Xerox copy of the certificate of income dated 27/10/2006 issued to Vishwas G. Salgaonkar and also certificate income dated 1/8/2014 issued on the name of Sudhir R. Kandolkar. Both the certificates reveal that the said certificate were issued at the request of both the parties and based on the affidavit filed by them. The said was issued by the Chief Officer of Mapusa Municipal Council for the purpose of availing comunidade plot by Shri Vishwas G. Salgaonkar and by Shri Sudhir R. Kandolkar for the purpose of obtaining OBC certificate. The application/forms, Affidavits and other documents submitted by the respective parties for obtaining the said certificate of income has gone missing within a short span of year. It is the contention of the present PIO that till date that the said file/Documents is not available and not traceable in their office records despite of through search. 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 records are weeded out as per the procedure. In this case it is only the lapse and failure of the authority to preserve the records 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.
16. 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 ”.

17. 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”.

18. Considering the above position and the file/documents at point No. B-1 to 5 and C-1 to 3 are still not available now, I am unable to pass any direction to furnish information at point No. B-1 to 5 and C-1 to 3 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 and therefore the appropriate order is required to be passed so that the liability are fixed and records are traced.

19. It is seen from the records that Respondent PIO have not acted in conformity with the provisions of RTI Act. The PIO and the public authority must introspect that not furnishing of the correct and/or incomplete information lands the citizen before first appellate authority and also before this commission resulting into unnecessary harassment of the common man which is socially abhorring and legally impermissible and hence the PIO is hereby Admonished and is hereby directed to be vigilant henceforth while dealing with the RTI matters and to comply the provisions of the RTI Act in true spirit.
20. Before parting the commission observes that a application was also made by the appellant on 21/5/2018 seeking information pertaining to certificate of income bearing No. EST/6014/2014 dated 1/8/2014 issued to Shri Sudhir R. Kandolkar and the second appeal was filed pertaining to said application which was register as appeal No.199/2018/SIC which was disposed by this commission vide order dated 15/10/2018 wherein the inquiry was ordered by this commission for a missing documents. The same information is again sought by the appellant vide application dated 1/8/2018 at point C-1 to 3.
21. While expressing the concern on numerous and redundant applications filed under the Act the Hon'ble Supreme Court in the case of Central board of secondary education an another V/s Aditya Bandhopadhaya in civil appeal No.6454/2011 has observed;

“-----The Nation does not want to scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicant instead of discharging their regular duties. The threat of penalties under RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing “information furnishing “at the cost of their normal and regular duties”.

22. Applying the above ratio to the case in hand, the appellant is hereby directed to refrain himself from seeking the same information again and again when the information have been already provided to him or duly replied. Such conduct and act on the part of the appellant of seeking same information again and again attributes hindrance in smooth functioning of public authorities instead of discharging regular duties.
23. In the above given circumstances and in the light of the discussion above , I dispose of the appeal with following order;

ORDER

1. Appeal allowed.
2. The PIO is hereby directed to furnish complete and correct information at point No. 4 to the appellant as sought by the appellant vide his application dated 1/8/2018 free of cost within 20 days from the date of the receipt of the order.
3. The Director of Municipal Administration at Panajim , Goa or through his authorized officer shall conduct an inquiry regarding the said missing of file /documents concerning the issue of issuing certificate of income bearing No. EST/754/5663/06 dated 27/10/2006 issued in the name of Shri Vishwas G. Salgaonkar by the Chief Officer of

Mapusa Municipal council and to fix the 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 report shall be furnished to the appellant.

4. 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.
5. The Public authority may also appoint Records officer for the purpose of maintaining and preserving the official records.
6. The copy of the order shall be sent to the Director of Municipal Administration at Panajim for information and for appropriate action.

Appeal proceedings disposed and closed accordingly.

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