

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

---

**Appeal No. 47/2019/SIC-I**

Shri Nevil B.Furtado,  
House No. 51, Copelwaddo,  
Sernabatim, Salcete-Goa.

....Appellant

V/s

1) The Public Information Officer,  
Office of the Dy. Collector & SDO,  
South, Margao-Goa 403602

2) First Appellate Authority,  
O/o Additional Collector South,  
Fatorda, Margao Goa.

.....Respondents

**CORAM:**

**Smt. Pratima K. Vernekar**, State Information Commissioner

Filed on: 22/2/2019

Decided on: 26/03/2019

**ORDER**

1. The brief facts leading to present appeal are that the appellant Shri Nevil B. Furtado herein by his application dated 23/10/2018 sought inspection of 6 files pertaining to case bearing No. (i) LRC/Illeg-Conv/37/2000, (ii) LRC/Illeg-Conv/38/2000, (iii) LRC/Illeg. Conv/39/2000 (iv) LRC/Illeg-Conv/40/2000, (v) LRC/Illeg-Conv/41/2000 and (vi) LRC/Illeg-Conv/42/2000. The said information sought from the Respondent No.1 Public Information Officer (PIO), office of Dy. Collector and SDO South-Goa at Margao. 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 responded by the Respondent no 1 PIO on 5/11/2018 thereby calling upon him to

inspect the file bearing No. (i) LRC/Illeg-Conv/37/2000, (ii)LRC/Illeg-Conv /38/2000, and case file No.(iii)LRC/Illeg-Conv/39/2000 after payment of Rs.50 for three hours. Vide said letter it was also informed to him that three files bearing No.(i)LRC/Illeg-Conv/40/2000, (ii) LRC/Illeg-Conv/41/2000 and (iii) LRC/Illeg-Conv/42/2000 are not traceable and efforts are been made to trace the said files and as soon as the files are traced the same shall be intimated to him . It was further submitted that in respect of case No. LRC/Illeg.Conv/40/2000, an letter dated 30/1/2014 is already addressed to the Police Inspector ,Margao Town Police Station to take necessary steps in the matter.

3. It is the contention of the appellant that he being not satisfied with the said reply of PIO and as the files were not made available to him for inspection, the appellant filed 1<sup>st</sup> appeal on 7/12/2018 before the Respondent no 2 Collector of South Goa District, being First appellate authority in terms of section 19(1) of RTI Act.
4. It is the contention of the appellant that the Respondent no. 2 first appellate authority vide order dated 4/1/2019 allowed his appeal and directed the respondent no.1 PIO to issue the information to the appellant, free of cost within 15 days as per the original application dated 23/10/2018.
5. It is the contention of the appellant that inspite of the said order, since the said information/inspection 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 12/2/2019 in his 2<sup>nd</sup> appeal as contemplated u/s 19(3) of RTI Act, thereby seeking relief of directions to PIO to furnish the information/inspection of the files as sought by him vide his application dated 23/10/2018.
6. Notices were issued to both the parties. Appellant appeared in person. Respondent PIO was represented by Shri Abhishek Naik

who placed on record the reply of respondent PIO. Respondent no. 2 opted to remain absent neither filed any reply. Copy of the reply filed by the Respondent PIO furnished to the appellant.

7. It is the contention of the appellant that the Respondent has acted irresponsibly and has failed to preserve , maintain the said files in a duly catalogued and index manner as required under section 4(a) of Right to information Act, 2005. He further submitted that the notice dated 25/10/2000 was issued in the above files in pursuant to directions and order dated 29/2/2000 of the Hon'ble High Court in writ petition No. 126/1996 and as such he had sought the said information in a larger public interest in order to approach the competent forum. It is his contention that the three files has purportedly reported as not traceable. The appellant sought for intervention of this commission and prayed for direction to the PIO to comply the order of first appellate authority and to give him the inspection of records/files as sought by him.
8. The PIO vide his reply dated 26/3/2019 contended that the inspection of file bearing No.(i) LRC /Illeg-Conv/37/2000,(ii) LRC/ Illeg- Conv/38/2000,(iii) LRC/ Illeg- Conv/39/2000 was offered to the appellant but the appellant failed to visit the office for the purpose of carrying the inspection. It was further contended that three files bearing No. (i) LRC/Illeg-Conv/40/2000, (ii)LRC/Illeg-Conv/41/2000 and (iii) LRC/Illeg-Conv/42/2000 are not traceable. It was further submitted that in respect of case No. LRC/Illeg.Conv/40/ 2000, an letter dated 30/1/2014 is already addressed to the Police Inspector, Margao Town Police Station to take necessary steps in the matter and the inquiry of the said missing file is pending before the Additional Secretary (GAD).
9. I have scrutinise the records available in the file and also considered the submission of the parties.

10. It is the contention of the present PIO that till date that the said file/Documents pertaining to Case bearing No.(i) LRC/Illeg-Conv/40/2000,(ii)LRC/Illeg-Conv/41/2000 and (iii) LRC/Illeg-Conv/42/2000 is still 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 public 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.

11. 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 ”.

- 12.** 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”.

13. Considering the above position and the file/documents in file bearing No. LRC/Illeg–Conv/40/2000,(ii) LRC/Illeg–Conv/41/ 2000 and(iii) LRC/Illeg–Conv/42/2000 are still not available now, I am unable to pass any direction to furnish information to give inspection of above files 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.
14. 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 give the inspection of the files pertaining to case No. (i) LRC/Illeg-Conv/37/2000,

(ii)LRC/Illeg-Conv/38/2000 and (iii) LRC/Illeg-Conv/39 /2000 to the appellant herein as sought by him vide his application dated 23/10/2018, free of cost, within 20 days from the date of the receipt of the order. The convenient date for inspection should be mutually fixed by both the parties.

3. The Collector of South Goa or through his authorized officer shall conduct an inquiry regarding the said missing of file/documents pertaining to case No. (i) LRC/Illeg-Conv/41/2000 and LRC/Illeg-Conv/42/2000 and to fix the responsibility for missing said file/documents. He shall complete such inquiry within 5 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.
4. The Public authority concerned herein also shall carry out the inventory of their records within 5 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 Public authority concerned herein i.e the office of the Collector of South Goa District at Margao is hereby directed comply with the provisions of section 4 of RTI Act,2005 on priority basis.
7. The copy of the order shall be sent to the Collector of South Goa at Margao for information and for appropriate action.

With the above direction 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