

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

Appeal No. 108/2020/SIC-I

Mr. Adolfo Carvalho,
Near Old Bus Stand,
Panaji-Goa.
403001.

....Appellant

V/s

1) Orville Vales,
The Public Information Officer
Village Panchayat of Mercedes,
Merces –Ilhas, Goa.
403005.

.....Respondents

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

Filed on: 03/07/2020

Decided on: 11/08/2020

ORDER

Brief facts leading to present appeal as put forth by the Appellant Shri Adolfo Carvalho are as under :-

1. In exercise of the right u/s 6 (1) of RTI Act, 2005 the Appellant filed application on 10/01/2020 seeking certain information from the Respondent Public Information Officer (PIO) of the Village Panchayat of Mercedes, Ilhas on two points as stated there in his said application.
2. Vide said application the Appellant has sought for the following information.
 - i) Certified copy of construction license no.4/2000-2001 issued to Ramkrishna Raikar in terms of resolution 4(1) dated 1/04/2000 along with approved plans for construction.
 - ii) Certified copy of construction license no.12/1994 dated 31/07/1994 in survey no.16/3 of Murda Village in terms of resolution 4(1) dated 31/07/1994 along with approved plans.

- 3) It is the contention of the Appellant that his above application was responded by the Respondent vide letter dated 06/02/2020 in terms of sub-section (1) of section 6 of RTI Act, wherein he was informed that information sought by him pertains to the year 1994-2001 and the said records has been searched by him in the records maintained in their Office of Village Panchayat Merces and the same could not be traced and all efforts are been made to locate the said file and the Appellant so desires to come and inspect the Panchayat records during the Office hours.
- 4) It is the contention of Appellant that he being not satisfied with the reply of the Respondent PIO and as no information was provided to him as such he deeming the same as rejection, filed First Appeal on 12/02/2020 before the Block Development officer (BDO), Panajim- Goa being First Appellate Authority in term of section 19(1) of RTI Act, 2005 which was registered as First Appeal No. 57/2019-20.
- 5) It is a contention of the Appellant that First Appellate Authority after hearing both the parties disposed his First Appeal on 16/03/2020 wherein the Respondent was directed once again to go through the records of his office and provide the information to the Appellant if the same is traced out, within 15 days of the receipt of the order and further, if the Respondent is not able to trace out the information within time limit as per mentioned above, then he shall initiate necessary action in the matter as per the provision of law.
- 6) It is the contention of the Appellant that even after the lapse of many months, the Respondent have failed to provide the information as directed vide order dated 16/03/2020, as such he being aggrieved by the action of Respondent 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.

- 7) In this background the second appeal came to be filed on 03/07/2020 by the Appellant on the grounds raised in the memo of Appeal and with a contention that the information is still not furnished and seeking directions from this Commission to the Respondent to furnish him the information immediately as sought by him and also seeking relief for invoking penal provision u/s 20 of RTI Act against the Respondent.
- 8) 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 along with Shri Roy C D'souza. Respondent PIO Shri. Orville Vales was present.
- 9) Reply filed by Respondent PIO Shri. Orville Vales on 10/08/2020 copy of the same was furnished to the Appellant.
- 10) Arguments were canvassed by both the parties.
- 11) It is the contention of the Appellant that the order of First Appellate Authority was not complied by the Respondent PIO and he has not received any communication from the Respondent till date about the status or compliance of the order of First Appellate Authority dated 16/03/2020. It was further contended that the Respondent was duly bound to perform statutory duty under the Right to Information Act, 2005. It was further submitted that non compliance of the order of First Appellate Authority, amounts to insubordination and revilishing statutory duty and is punishable with penalty and disciplinary action. He further submitted that the Respondent is also liable for such an action to fix responsibility against him for denying the information and necessary FIR should be filed against the Respondent for the contempt of the order of First Appellate Authority.

12) On the other hand the Respondent PIO submitted that the information 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 and the said fact was informed to the Appellant initially vide letter bearing No. VP/MER/2013/2019-20 dated 06/02/2020. It was further contended that the information pertaining to the year 1994 and 2000-2001. It was further contended that he had issued Office memorandum vide no. VP/MER/2143/2019-20 dated 27/02/2020 and vide bearing no.VP/MER/237/2020-21 dated 18/06/20 to the staff of Village Panchayat Mercedes namely Smt. Arti Latkar (LDC) dealing Clerk and (Peon) Smt. Ana Maria Rodrigues to search once gain the concerned files and the above named staff has submitted replies that the files cannot be traced even after thorough search of the records by them. It was further contended that after the order of First Appellate Authority the Respondent again in compliance to same issued a office memorandum dated 18/06/2020 and since the concerned file could not be traced despite of thorough search he filed a complaint of missing files before the Old Goa Police Station and in support of his contention he replied upon his reply dated 06/02/2020, his memorandums dated 02/02/2020 and the common reply of Village Panchayat Clerk Smt. Arti Latkar and Peon Smt. Anna Maria Rodrigues which is inward in the Office of Panchayat by inward no.2569 dated 09/03/2020 and the office memorandum dated 18/06/2020 and the common replies given by Village Panchayat Clerk Smt. Arti Latkar and Peon Smt. Anna Maria Rodrigues which was inwarded under entry no. 882 dated 31/02/2020. The copy of the complaint dated 3/8/2020 addressed to Police Inspector of Old Goa of the missing file was also enclosed by the Respondent PIO to his above reply.

- 13) I have scrutinized the records available in the file also considered the submissions of both the parties.
- 14) In the present case there is no dispute that the construction licenses were issued based on the resolution by the Village Panchayat. It is the case of the Respondent PIO the said information could not be furnished to the Appellant since those files could not be traceable despite of the efforts to locate the same. Hence based on the statement of PIO himself 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 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.
- 15) 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 “.

- 16)** 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”.

- 17) One could gather from the documents relied by the Respondent PIO that the Office memorandum was issued to the present dealing Clerk and the present Peon of Village Panchayat Merces only and the replies were sought by him from them. The Village Panchayat Secretary ought to have inquired and ought to have sought explanation from the previous staff who was attached to the village Panchayat of Merces. Further perusal of the complaint dated 03/08/2020 filed by the Secretary of Village panchayat of Merces with the Police Inspector Old Goa about the missing of construction licence, it is seen that the said is given without fixing any responsibility on any of the staff for the loss of records. There is no thorough inquiry conducted in the present case for the loss of said records.

- 18) 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 the said 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.
- 19) 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 Panchayat at Panajim or through his authorized officer shall conduct an inquiry regarding the said missing file of construction Licence no.4/2000-2001 issued to Ramkrishan Raikar interms of resolution for bearing No. 4(1) dated 01/04/2000 and missing file pertaining to construction Licence no. 12/1994 dated 31/07/1994 in survey no.16/3 Murda interms of resolution 4(1) dated 31/07/1994. He shall complete such inquiry within 6 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 Panchayat at Panajim 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