

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

Appeal No. 184/2019/SIC-I

Shri Jawaharlal T. Shetye
H.N. 35/A, Ward No, 11,
Near Sateri Temple, Khorlim,
Mapusa-Goa -403 507
V/s

....Appellant

1) The Public Information Officer,
The main Engineer (Diniz D'Mello)
Mapusa Municipal Council,
Mapusa-Goa – 403507.

2) First Appellate Authority,
Chief Officer, (Mr. Clen Madeira)
Mapusa Municipal Council,
Mapusa-Goa 403507

.....Respondents

CORAM:

Ms. Pratima K. Vernekar, State Information Commissioner

Filed on:13/6/2019

Decided on:12/02/2020

ORDER

1. The appellant, Shri J. T. Shetye has filed the present appeal praying that the information as requested by him in his application dated 8/2/2019 be furnished to him correctly and completely and for invoking penal provisions against the Respondent Public Information Officer (PIO).
2. The brief facts leading to the present appeal are as under:-
 - a) The appellant vide his application dated 8/2/2019 addressed to Respondent No.1 PIO, of Office of Mapusa Municipal Council at Mapusa, requested to furnish certain information pertaining to (i)construction licences and occupancy certificate issued in the names of Geetabala M.Naik Parulekar, Sudhir R. Kandolkar, Jerry Braganza and Prashant Verlekar and other information connected to said subject matter,(ii) regarding representation dated 10/1/2019 made by Mapusa Peoples union to the Mapusa Municipal Council and the DMA regarding the termination of service of temporary Engineer

Shri Tukaram kaskar and the other information pertaining to Shri Tukaram Kaskar and also(iii)pertaining to Shri Jaivant Tari, Shri Venkatesh Sawant .

- b) The said application was filed by the appellant with the Respondent No. 1 PIO u/s 6(1) of Right To Information Act, 2005. The copy of the occupancy Certificates bearing No. MMC No.1/57/334/05 dated 14/3/2005 issued to Shri Prashant Verlekar and Smt. Priya Verlekar and the copy of the representation dated 10/1/2019 addressed to Chairperson/ Chief Officer by the Mapusa Peoples Union was also enclosed to the RTI application.
- c) It is contention of the appellant that he has not received any reply from the PIO nor any information furnished to him within stipulated period of 30 days as contemplated under sub-section (1) of section 7 of RTI Act, 2005.
- d) It is the contention of the appellant that as the information as sought was not furnished, the appellant filed first appeal in terms of section 19(1)of RTI Act before the Chief Officer of Mapusa Muncipal Council who is Respondent No. 2 herein on 12/3/2019 being First Appellate Authority (FAA).
- e) It is contention of the appellant that his said first appeal was not taken up for hearing by the Respondent No. 2 First Appellate Authority(FAA),neither passed any order within stipulated time as contemplated u/s 19(6) of the RTI Act, 2005.
- f) It is contention of appellant that as no information was received by him and he being aggrieved by the action of both the Respondents, had been force to approach this Commission in this second appeal u/s 19(3) of the Act, on 13/6/2019.

- g) In this background the appellant has approached this commission with the contention that the information is still not provided and seeking order from this Commission to direct the PIO for providing him information as sought by him free of cost and for imposition of penalty on PIO for a delay in furnishing the information and also compensation.
3. In pursuant to the notice of this Commission the appellant was present in person during few hearings. The Respondent PIO Shri Diniz D'Melo present alongwith APIO Shri Vinay Agarwadekar. The respondent No. 2 first appellate authority opted to remain absent despite of due service of notice.
 4. Affidavit was filed by Respondent No.1 PIO 20/8/2019 so also compliance report was filed by him on 17/9/2019 alongwith enclosures. The copy of the same was furnished to the appellant.
 5. Reply was also filed by Asst. Public officer Shri Venkatesh Sawant on 10/10/2019 and compliance report by Asst. Public officer Mrs, Anuradha Natekar on 25/11/2019.
 6. Opportunity was granted to the respondent no. 2 First appellate authority to file his respective say despite of same no say came to be filed on their behalf. It appears that they have no any say to be offered and hence this commissions presumes and holds that the Respondent No. 2 does not disputes the averments made by the appellant in the memo of appeal.
 7. The respondent no. 1 PIO though was directed to file affidavit clarifying what he meant by "information not available "as stated by him in his letter dated 16/7/2019 given at point no. A (ii),A(iii),A(v), B iv(d) and B iv (e) despite of same since no affidavit was placed on record, hence a fresh notice was issued to Respondent no. 1 PIO. Despite of same the PIO did not bother to appear and file his affidavit .

8. Since appellant as well as both the Respondents remained absent they were directed to file written synopsis if any in a week time from 29/1/2019 and then matter was fixed for order . Since no written synopsis were filed by either of the parties, as such this commission had no any option then to decide the matter based on the records available in the file.
9. Vide affidavit , dated 20/8/2019 the PIO submitted that he made the efforts to trace out the concerned file/documents from three sections and the necessary available information where furnished to the appellant vide office letter bearing No. EST/RTI/4500/2019 dated 16/7/2019 and in support of his contention he relied upon the letter dated 16/7/2019. Vide compliance report dated 17/9/2019 it was further submitted that since the appellant was not satisfied with the reply furnished at serial No. A(ii),he again issued memorandum to the concerned dealing hand Mrs Anuradha Natekar and he has not received a fresh information from the concerned dealing hand till date and in support of his contention he relied upon memorandum dated 26/8/2019 issued to APIOs.
10. The APIOs Mrs. Anuradh natekar vide her compliance report dated 25/11/2019 submitted that the Mapusa Municipal council had not appointed any person for the post of Store keeper during the issue of said occupancy certificate to the residential buildings. She further submitted that she alongwith the office peon had taken the efforts and searched the records of occupancy certificate with effect from 2005 till date and inspite of the said file was not traced and found on the records and if the said file is traced out in future they may furnish the information to the appellant free of cost.
11. In the nutshell it is the case of PIO Shri Diniz D'Melo and the APIO Smt. Anuradha Natekar that despite of efforts and search, the files pertaining to constructions and occupancy certificate to the

residential buildings could not be traced and are not found in the records.

12. In the present case the appellant has enclosed the copy of the occupancy Certificates bearing MMC No.1/57/334/05 dated 14/3/2005 issued to Shri Prashant Verlekar and Smt. Priya Verlekar .On perusal of the said copy it is seen that there is a stamp of having issued it under the RTI Act by the PIO of the Mapusa Municipal Council. Hence 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. So also the other information which is reported as not available in the letter dated 16/7/2019 by the PIO ought to have been existed in the records of the public authority concerned herein. 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.
13. 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 “.

14. 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”.

15. 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.

16. Further on going through the entire records of the present case, it is seen that the application was filed on 8/2/2019. The same was suppose to be responded by 8/3/2019. The Respondent No. 1 PIO did not place any correspondence on records of having responded to the application of the appellant and of having furnished information to appellant within 30 days time as contemplated u/s 7(1) of RTI Act. On the contrary it is seen from the records that the available information came to be furnished vide letter dated 16/7/2019 is during the present proceedings. Hence from undisputed and unrebutted facts, it is seen that the Respondent PIO have failed to respond the said application filed by Appellant u/s 6(1) of RTI Act, 2005 within stipulated time of 30 days as contemplated u/s 7(1) of RTI Act.
17. Respondent No. 2 First appellate authority also did not placed on record any documents of having heard the first appeal nor placed on record the order passed by him .
18. The said act came into existence to provide fast relief and as such time limit is fixed under the said act to dispose the application u/s 6(1) of RTI Act, 2005 within 30 days and to dispose first appeal maximum within 45 days. The act and conduct on the part of PIO and Respondent No.2 First appellate authority is not in conformity with the provisions of RTI Act, 2005.
19. The displeasure is hereby expressed by this commission on the conduct and the attitude of the respondent No. 2 First appellate authority. Despite of due service of notice he did not bother to appear before this commission neither any reply was filed by him. It is seen from the past records that the Respondent no.2 first appellate authority have acted in similar manner and fashion showing scant respect to the provisions of the RTI Act and also to

the commission. Such a conduct on the part of the Respondent No. 2 FAA is not in conformity with the provision and the spirit of the Act. It also amounts to derelictions of duties and of unbecoming of Government servant. Hence it is the need of the hour that such attitude and conduct of the respondent No. 2 FAA cannot be taken lightly and has to be viewed seriously.

20. In the above given circumstances and in the light of the discussion above, I dispose the above appeal with the following:-

Order

- a) The appeal is partly allowed.
1. The Director of Municipal Administration at Panajim or through his authorized officer shall conduct an inquiry regarding the said missing files pertaining to information sought vide application dated 8/2/2019 at point no. A (ii),A(iii),A(v), B iv(d) and B iv (e) which are reported as not traced and found in the records and to fix responsibility for missing said file/documents. 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. Both the respondent no. 1 and 2 is hereby directed to be vigilant henceforth while dealing with the RTI matters, any lapses found in future shall be viewed seriously .
 3. In exercise of my powers conferred u/s 25(5) of RTI Act 2005 this Commission recommends that the Chief Secretary for the State of Goa at Porvorim and Director of Municipal Administration, Panjim shall issue instruction to the Respondent No.1 PIO and to Respondent No.2 first appellate authority to deal with the RTI matters

appropriately in accordance with the provisions of the RTI Act and any lapses on the part of respondents be considered as dereliction of duties.

4. Copy of this order shall be sent to The Chief Secretary, Secretariat, Porvorim-Goa and to the Director of Municipal Administration, Panjim-Goa for information and necessary action.

With the above directions, the appeal proceedings stands closed.

Pronounced in the open court. Notify the parties.

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