

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

Appeal No. 20/2020/SIC-I

Shri Francisco Xavier M.N. Dias,
r/o. H. No. 491, Flat No. F-3 and FF-1,
Techno Cidade, Porvorim, Bardez Goa

....Appellant

V/s

1) The Public Information Officer,
Town & Country Planning Department,
Mapusa, Bardez Goa.

2) First Appellate Authority,
The Senior Town Planner,
Mapusa Goa.

.....Respondents

CORAM:

Ms. Pratima K. Vernekar, State Information Commissioner

Filed on: 22/01/2020

Decided on: 04/06/2020

ORDER

1. The Appellant, Shri Francisco Xavier M.N. Dias has filed the present appeal praying that the information as requested by him in his application dated 20/6/2019 be furnished to him correctly and completely and for invoking penal provisions against both the Respondents.
2. The brief facts leading to the present appeal are as under:-
 - a) The Appellant vide his application dated 20/6/2019 addressed to Respondent No.1 PIO of Office of Town and Country Planning Department, Mapusa, Bardez-Goa, requested to furnish copy of all the documents in the entire file with respect to Licence/Technical clearance bearing No. DB/10199486/94 dated 21//3/1994 including plan attached to it and also Technical clearance order.
 - 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.

c) It is contention of the Appellant that he received reply from the PIO on 18/7/2019 as contemplated under sub-section (1) of section 7 of RTI Act, 2005 thereby informing him that file being searched in the record section but could not be traced out despite of efforts being made to search the file and no sooner the file is located the information will be furnished to him.

d) It is the contention of the Appellant that as the information as sought was not furnished, and he being not satisfied with the said reply of the Respondent PIO filed first appeal in terms of section 19(1) of RTI Act on 6/11/2019 before the Senior Town Planner, at Mapusa-Goa who is Respondent No. 2 herein being First Appellate Authority (FAA).

e) It is contention of the Appellant that the Respondent No. 2 First Appellate Authority disposed his first appeal vide order dated 19/11/2019 by upholding the say of the Respondent No. 1 PIO which was totally based on the wrong findings .

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 forced to approach this Commission in this Second Appeal on 21/1/2020 in terms of section 19(3) of the RTI Act .

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 for strict action against Respondent No.2 for acting bias and passing evasive orders.

3. In pursuant to the notice of this Commission, the Appellant was represented by Advocate H. Ghate. The Respondent No. 1 PIO

Shri Prakash Bandodkar was present. Respondent No. 2 First Appellate Authority opted to remain absent despite of due service of notice twice neither filed any reply. As such it is presume that he has no say to be offered and averments made in the memo of appeal are not disputed by him.

4. The Advocate for the Appellant submitted that few days before the above application under RTI Act was made, the office of Respondent had revised the said plan vide technical clearance No. TPB/4831/PII/TCP-19/1267 dated 20/2/2019 and he had sought the information in respect of the old plan which was revised now and as such, it is his contention that the Respondent PIO is giving evasive answers that they could not trace the file in order to avoid giving the said information. It was further submitted that he had pointed out the said fact to the Respondent No. 2 First Appellate Authority but the Respondent No. 2 FAA did not considered the plea of the Appellant and came to the wrong findings that the said file pertaining to revised plan was given for inspection to the Appellant and to the advocate appearing on his behalf, when in fact no such file was ever produced and given for inspection to the Appellant. It was further submitted that the Respondent No. 2 First Appellate Authority in his order acted bias on the side of the Respondent No. 1 PIO, thereby depriving him the information.
5. Advocate for the Appellant filed memo on 28/2/2020 thereby relying upon Xerox copy of the Plan of the year 1994. The copy of the same was furnished to Respondent PIO.
6. During the hearing on 13/3/2020, the Respondent no. 1 PIO submitted that the file has now been traced and showed his willingness to furnish the information. He accordingly filed his reply on 18/3/2019 and submitted that he has carried the information for onward submission to the Appellant. However on account of absence of Appellant and his lawyer, the reply of PIO

and information could be submitted to Appellant. The Appellant was directed to collect the same before the next date of hearing. In view of lockdown the further proceedings could not be held nor the PIO could submit the information to the Appellant .

7. It is pertinent to note that both the Respondents have admitted of existence of said file at some point of time in the records of the public authority concerned herein which was reported not found /not traceable in the records section till the present appeal was filed by Appellant . In this case it is only the lapse and failure of the public authority to maintain and preserve the records properly.
8. The Respondent No. 2 First Appellate Authority has taken the entire issue casually and has passed order mechanically. He ought to have realised that the facts missing/non availability of said public records is serious and hence he being senior officer could have ordered inquiry and ought to have fixed responsibility. It appears that no such exercise was done by Public authority concerned herein. Above findings of mine are based on the ratio laid down by the Hon'ble High Court of Bombay in Writ Petition No. 6961 of 2012, Vivek Kulkarni V/s State of Maharashtra and by the Hon'ble High Court of Delhi in Writ Petition No. (c)36609/12 and CM7664/2012(stay) filed by Union of India V/s Vishwas Bhamburkar .
9. The facts and circumstances of the present case doesn't warrant levy of penalty on the Respondent No.1 PIO as it is seen from the records that the application of the Respondent were responded well within stipulated time of 30 days and the Respondent No. 2 First Appellate Authority has also uphold his say that the file is not traceable, hence I do not find any fault or irregularity in the

reply of Respondent No. 1 PIO dated 18/7/2019 given interms of section 7(1) of RTI Act.

10. In view of circumstances that now the file has been traced and Respondent No. 1 PIO has volunteered to furnish the same free of cost. I dispose the above appeal with the following order:

ORDER

- i. Appeal partly allowed.
- ii. The Appellant is hereby directed to collect the information sought by him vide his application dated 20/6/2019 from the Respondent No. 1 PIO within 10 days from the date of receipt of this order by him.
- iii. The Public Authority concerned herein is directed to make inventory of records and to maintain and preserve the records properly.
- iv. Prayer (b) and (c) rejected.

With the above directions 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