

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

---

**Appeal No. 317/2019/SIC-I**

Mr. Nazareth Barretto,  
Agriculturist , Indian National,  
Resident of H.No. 126,Borda,  
Margao - Goa.

....Appellant

V/s

1) The Public Information Officer,  
The office of Deputy Collector,  
S.D.O. of Salcete Taluka,  
Margao, Salcete-Goa.

.....Respondents

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

Filed on: 11/11/2019

Decided on: 22/01/2020

**ORDER**

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

1. In exercise of the right u/s 6 (1) of RTI Act, 2005 the appellant filed application on 15/5/2019 seeking certain information from the Respondent No.1 Public Information Officer (PIO) of the Office of the Deputy collector and SDO of Salcete Taluka at Margao-Goa on three points as stated there in his said application mainly pertaining to proceedings bearing No. LRC/PART/ 191/2003 and the memorandum issued by their office in case No.SDO/SAL/MISC-PART-DAV/2016/8016 dated 30/9/2016.
2. It is the contention of the appellant that his above application was responded by the Respondent vide letter dated 28/5/2019 in terms of sub-section (1) of section 6 of RTI Act , wherein he was informed that after verifying the inventory records of their office the concerned file bearing No. LRC/PART/191/2003 cannot be located and all the efforts being made to locate the same and if the file is found he will be informed accordingly .

3. It is the contention of appellant that he being not satisfied with the reply of the Respondent No. 1 PIO and he despite of visiting the office of Respondent on several occasion as no information was provided to him as such he deeming the same as rejection, filed first appeal on 12/07/2019 before the Additional collector at Margao being first appellate Authority in term of section 19(1) of RTI Act, 2005 which was registered as appeal No. 26/RTI – Appeal/EST/AC-I/2019/8719.
4. It is a contention of the appellant that First Appellate Authority after hearing both the parties disposed his first appeal on 27/8/19 wherein directions were given to put on job dedicated staff/dealing hand to trace the file within one month and in case the file is not traced necessary criminal prosecutions to be initiated by the Deputy collector under intimation to the appellant .
5. It is the contention of the appellant that even after the lapse of more that one month from passing of the order, the respondent have failed to provide the information as directed vide order dated 27/8/2019 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.
6. In this background the second appeal came to be filed on 11/11/2019 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.
7. 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. Respondent PIO Shri Vishal Kundaikar was present.

8. Affidavit filed by Respondent PIO Shri Vishal Kundaikar on 22/1/2020 affirming that their Department has tried to trace the movement of file bearing No. LRC/PART/191/2003 however the said file could not be tracked in the office and all possible efforts were made to locate the same. The copy of the same was furnished to the appellant.
9. Argument were canvassed by both the parties.
10. It is the contention of the appellant that the office of Dy. Collector is a public body functioning under the Government in the state of Goa and hence falls under the purview of "PUBLIC AUTHORITY" and therefore are bound to provide the information sought under the Right to Information Act. It was further contended that failure of the respondent to furnish the information sought clearly amounts to the violation of RTI Act and therefore calls for inquiry and disciplinary action against the Respondent. It was further submitted that the contention of the Respondent PIO that the same is not found in records/not traceable is unacceptable to him.
11. 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. He further submitted that upon inquiries with the present staff of all possibilities of where the file could be, however none of the staff were aware of it. He further submitted that if the file is traced, the due information could be provided to appellant.
12. I have scrutinized the records available in the file also considered the submissions of both the parties.

13. In the present case the appellant is trying to seek the copy of entire file alongwith the Roznama of proceedings and copy of the order dated 10/12/2003 passed in proceedings bearing No. LRC/PART/191/2003 and the copy of the memorandum issued by their office in case No. SDO/SAL/MISC-PART-DAV/2016/8016 dated 30/9/2016. 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 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.

14. 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 ”.

15. 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”.

16. 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.
17. In the above given circumstances and in the light of the discussion above , I dispose of the appeal with following order;

## **ORDER**

1. The Collector of South-Goa District at Margao or through his authorized officer shall conduct an inquiry regarding the said missing file bearing No. LRC/PART/191/2003 and to fix 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 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 Collector of South-Goa District at Margao 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