

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

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**Appeal No. 70/2020/SIC-I**

Mrs Mamta Uttam Naik Gaonkar ,  
H.No. 1077,  
Kindlem, Canacona-Goa,

....Appellant

V/s

1) The Public Information Officer,  
Administrator of Comunidade (South),  
Office of the Administrator of Comunidade,  
Margao-Goa.

2) First Appellate Authority,  
Additional Collector-I,  
Margao –Goa.

.....Respondent

**CORAM:**

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

Filed on:27/02/2020

Decided on:23/07/2020

**ORDER**

1. The brief facts leading to the present appeal as putforth by Appellant are as under:-

a) The Appellant Smt. Mamta Uttam Naik Gaonkar vide her application dated 14/9/2019 addressed to Respondent No.1 PIO, of Office of Administrator of Comunidade (South) at Margao –Goa , requested to furnish certified copies of file bearing No. 1/69 with respect to allotment of Comunidade property situated at Canacona–Goa to Uttam Pandu Naique, Gauncer. 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 Appellate also placed on record the acknowledgment card of the postal authorities of having received the application by the Administrator of Comunidade,South.

b) It is contention of the Appellant that she did not received any reply from the Respondent No.1 PIO nor any information furnished to her within stipulated period of 30 days as

contemplated under sub-section (1) of section 7 of RTI Act, 2005.

- c) It is the contention of the Appellant that as the information as sought was not furnished, she filed first appeal on 9/1/2020 in terms of section 19(1) of RTI Act before the Additional Collector-I, South Goa District at Margao-Goa who is Respondent No. 2 herein being First Appellate Authority (FAA).
  - d) It is contention of the Appellant that her said first appeal was registered as case number 52/RTI/Appeal/EST/AC-I/2019 and after notifying the parties the Respondent No. 2 First Appellate Authority (FAA), vide order dated 29/11/2019 allowed her Appeal and directed Respondent PIO to furnish the information to the Appellant.
  - e) It is contention of Appellant that as no information was received by her and she being aggrieved by the action of Respondent PIO, had been force to approach this Commission in this second appeal u/s 19(3) of the Act, on 27/2/2020.
  - f) In this background the Appellant has approached this commission on the grounds raised in the memo of Appeal with the contention that the information is still not provided and seeking order from this Commission to direct the PIO for providing her information as sought by her free of cost .
2. The Matter was listed on board and was taken up for hearing. In pursuant to the notice of this Commission the Appellant was represented by her son Shri Raju U. Gaonkar. The Respondent No. 1 PIO was represented by Shri Vivek Desai. The Respondent No. 2, First Appellate Authority opted to remain absent .
  3. Reply was filed by PIO alongwith enclosures on 14/7/2020. The copy of the same was furnished to the Appellant .

4. Since the Respondent No. 1 PIO in his reply had submitted that the information sought by the Appellant is not available in the office record of Respondent no.1, this commission directed to the Respondent PIO file affidavit clarifying what he meant by "information not available" as stated by him in his letter dated 23/12/2019 and before this commission vide reply dated 14/7/2020
5. Affidavit was filed by Respondent No.1 PIO on 23/7/2020 and also by the representative of Appellant on 23/7/2020 thereby enclosing copy of documents. The copy of the same was furnished to the representative of Respondent PIO.
6. Vide affidavit the Appellant contended that her late husband Uttam Naik Gaonkar has filed an application in the year 1969 for regularization of encroachment of Comunidade land during his life time and the said file was referred to Administrator of Comunidade, Margao for further action. It was further submitted that her husband expired on account of his sickness and that time her children was small and she being illiterate could not process the file. It was further contended that after the death of her husband when she inquired with the office of Comunidade she was furnished the copies of file of her late husband and she was informed that her late husband file has been processed. It was further contended that the copies of the documents which are annexed to the affidavit were obtained from the office of Administrator and on the said copy the stamp of Administrator is seen. It was further contended that finally the said application and the said file was with the Administrator of Comunidade Margao. It was further contended that the Statement of Respondent no. 1 PIO that the file is not traceable in office is a false statement .

7. It is the contention of the representative of Appellant that the information sought is qualified and comes within the provisions of RTI Act and therefore the PIO is required to furnish the information since the information which was sought was pertaining with the records of Comunidade. It was further contended that it was totally unjustified on the part of PIO by not providing information and hiding the same. It was further contended that Respondent No. 2 First Appellate Authority also failed to take the action against Respondent No. 1 PIO and failed to provide the information in time as per law and delay to take action.
8. On the other hand the Respondent no. 1 PIO submitted that in compliance of the order dated 29/11/2019 passed by the additional collector-I FAA the Appellant was informed vide office letter No.ACSZ/120/RTI/2019-20220/356 dated 23/12/2019 that the information sought by her is "not available" and the said letter dated 23/12/2019 was dispatched by post to the Appellant and in support of his contention, the letter dated 23/12/2019 and the postal acknowledgment was relied upon.
9. It was further contended by Respondent No. 1 PIO that Appellant had earlier applied for similar information from the office of Respondent no. 1 by its RTI Application dated 5/7/2019 and the office of the Respondent no.1 PIO vide office letter NO. ACSZ/120/RTI/2019-2020/248 dated 19/9/2019 had also informed her that the information sought is not available in the office of Respondent no. 1 and in support of his above contention he relied upon the RTI Application dated 5/7/2019 filed by the Appellant and the reply of said application dated 19/9/2019
10. In the nutshell it is the case of PIO information could not be provided as same is not available in the records of the office of Respondent No.1.

11. I have scrutinise the records available in the file also considered the submission made by both the parties
12. In the present case the appellant has enclosed the copy of documents /processing the application of her late husband of the Appellant to the affidavit filed by her before this commission on 23/7/2020. Further on perusal of the copy of ordinary meeting of Managing committee of Comunidade of Nagorcem –Palolem dated 5/1/1995, one could gather that a resolution was passed based on the circular to return all the files of Aforamantoes pending in their office to the office of Administrator of Comunidade of South Zone, at Margao. On reading of the foot note, it is seen that the file is submitted to the Administrators office of the Comunidade South Zone Margao by Escrivao and the inward stamp of having received the same vide entry no. 4056 and No.317 is seen on the same . Hence one could gathered from bare reading of said documents that the said file was sent to the office of Comunidade South-Goa by the comunidade of Nagorcem – Palolem.
13. 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. 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, 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. The said RTI 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 on going through the entire records of the present case, it is seen that the application was filed on 14/9/2019 which was received by the office of Respondent PIO by post on 16/9/2019 hence the same was supposed to be responded by 16/10/2019. 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. 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. It is quite obvious that the Appellant has suffered lots of harassment, mental agony and torture in seeking information under the RTI Act which is denied to her till date. If the public authority has preserved the records properly, such an harassment and detriment could have been avoided. It appears that the public Authority concerned herein itself was not serious

with preservation of records. If such an attitude of the public authority is taken lightly would definitely frustrated the very objective of RTI Act itself and further obstruct in bringing transparency in the affairs of the public authority.

18. The right of the Appellant has been violated due to non furnishing of the information by the public authority. The Appellant who is senior citizen herein have been made to run from pillar to post in pursuing her RTI application. She has sought the said information with a specific purpose. She had wasted her energy and valuable time in pursuing the said application.
19. Public authority must introspect that non furnishing of the correct or incomplete information lands the citizen before First Appellate Authority and also before this commission resulting into unnecessary harassment of the common men which is socially abhorring and legally impermissible
20. In the above given circumstances and in the light of the discussion above, I dispose the above appeal with the following:-

### **Order**

1. The Collector of South-Goa at Margao or through his authorized officer shall conduct an inquiry regarding the said missing files bearing NO. 1 of 69 with respect to allotment of Comunidade property situated at Canacona-Goa to Uttam Pandu Naique Gauncer which is reported as not available in the office of Respondent NO. 1 PIO 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 said information from the PIO, free of cost , is kept open after the said file/information is traced .



2. The Public Authority concerned herein shall carry out the inventory of their records within 3 months and may also appoint Record Officer for the purpose of maintaining and to preserving Official Records properly.
3. Copy of this order shall be sent to Collector of South-Goa at Margao 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