

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

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**Appeal No. 95/2020/SIC-I**

Mr. Pravinsingh A. Shetgaonkar .  
C/o Adv. A.K.S.Gaonkar,  
H.No.1615/2, "Satyabhamakrishna"  
Opposite Goa Assembly,  
Malim Betim Bardez-Goa.

....Appellant

V/s

- 1) The First Appellate Authority,  
Office of Dy. Collector & SDO,  
Mapusa-Goa.
- 2) The Public Information Officer,  
The Joint Mamlatdar-IV  
AERO for 09-Porvorim Assembly constituency,  
Bardez-Goa.

.....Respondents

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

Filed on: 15/06/2020

Decided on: 11/08/2020

**ORDER**

1. By this appeal, the Appellant assails the order, dated 28/1/2020 passed by the Respondent No.1 First Appellate Authority in First Appeal bearing No. 22/27-PAS/2019/FAA/RTI , filed by the Appellant herein.
2. The brief facts leading to the present appeal are as under:-
  - (a) In exercise of right under section 6(1) of RTI Act, 2005, the Appellant Shri Pravinsingh A. Shetgaonkar filed application on 4/6/2019 seeking certain information from the Public Information Officer (PIO) of Dy. Collector(LA), North Collectorate, Panajim, Goa on 2 points as listed therein in the said application .
  - (b) Vide said application the Appellant had sought the following information.

1. a. Please provide all document submitted by following to include their name in election roll in part 36 of Porvorim Constituency before 2012 election and BLO in charge to include the name a)Gangadin Kevat, b) Jitendrakumar Sharma, c)Prafulkumar Sharma, d)Anjanakumar Sharma, e)Shivpuri kevat, f)Alindrakumar Kevat, g)Shankuntala Kevat, h)Premchandra Kevat.

b. Certify copy of entire file for deletion of name according to attach notice. (Annexure 1 and annexure 2).

2. Please provide all document submitted by following to include their name in election roll in part 37 of Porvorim constituency and BLO in charge to include the name.

Sr. no	Names	EPIC No.	Serial number in the list
1	Jitendrakumar Sharma	BGW0767749	610
2	Prafulakumar Sharma	BGW0744623	611

2. It is the contention of the Appellant that the PIO Dy. Collector(LA) North Collectorate, panajim Goa vide his letter dated 4/6/2019 transferred his said application to the Respondent No. 2 PIO of the Joint Mamlatdar –IV AERO for 09-Porvorim Assembly constituency, Bardez-Goa U/s 6(3) of RTI Act .

3. It is the contention of the Appellant his above application filed in terms of sub section(1)of section 6 was responded by the Respondent No. 2 Public Information Officer (PIO) on 2/07/2019 wherein the information at point No. 3 only provided and the information at point No. 1 and 2 is rejected on the ground that the records are not available , as such he being aggrieved by such an response of Respondent PIO filed First Appeal before the Respondent No. 1 office of Dy.Collector and SDO Mapusa-Goa on 25/9/2019 being

First Appellate Authority in terms of section 19(1) RTI Act 2005.

- e) It is the contention of the Appellant that after hearing both the parties, the Respondent No.1 First Appellate Authority disposed the said appeal by an order dated 28/1/2020 by upholding the say of PIO and without granting him any reliefs.
  - f) It is the contention of the Appellant that he being aggrieved by the action of both the Respondents has been forced to approach this commission in terms of section 19(3) of RTI Act
3. In this background the second appeal came to be filed on 15/06/2020 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 No. 2 PIO to furnish him the information immediately as sought by him and also seeking relief for invoking penal provision and also for compensation u/s 20 of RTI Act against the Respondent.
4. 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 No. 1 First Appellate Authority opted to remain absent. Respondent No. 2 PIO Smt. Janifer Fernandes was present alongwith Ms. Nisha Gaunkar .
5. Affidavit filed by Respondent no. 2 PIO on 11/08/2020 alongwith enclosures thereby submitting that the records of the information at point No. 1 (a) are not available as the same are weeded out as per the direction District Election Officer , North,Panajim. Vide the memorandum No. 5-3-2016-DEO/EI/WR/260 dated 26/9/2017. It was further submitted that the records sought at 1 (b) i.e the certified copies of entire file

for deletion of names is not traceable hence cannot be provided. The copy of the Affidavit alongwith enclosures were furnished to the Appellant.

6. Argument were canvassed by both the parties.
7. It is the contention of the Appellant that he is not satisfied with the information provided to him at point no. 1(a)and(b) as the same are replied to him as not available. It was further contended that the Respondents has failed to appreciate the fact that, the Appellant had brought to notice of Joint Mamlatdar-IV, AERO-09 Porvorim Assembly constituency and also filed complaint informing that bogus 02 number voting card is registered on the Appellant house number without verifying the fact. The Appellant further submitted that , 02 number names were first deleted in the year 2012 and again it was deleted in 2019 according to procedure, in both time it was the corrupt practice of BLO who has inserted the name illegally on Appellant house number. It was further contended that the Respondents has failed to understand a fair election is only conducted through a genuine voting card to elect a clean and capable person to represent public. The Appellant further states that in recent time, a lots of bogus voting card is registered in electoral roll of state without verifying any detail, thus election has become a mockery and a criminal character people is elected by way of bogus voting card during election and it become highly impossible task for capable person to get elected, so that we get transparent system. Denying access to the information is direct attempt to thwart that right of the public granted by the Act. By denying it will just help to register bogus voting card without any verifying any fact and will not elect the appropriate person in the system though election.
8. It was further contended that failure of the Respondent to furnish the information sought clearly amounts 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 are unacceptable to him.

9. It was further submitted that he had filed complaint against BLO Shri Ramakant Naik before Election Commission and the information at point No. 1(b) i.e certified copy of entire file for deletion of name was required by him to produce it in said complaint proceedings.
10. 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. She further submitted that the upon inquiries with the present staff of all possibilities of where the file could be, however non of the staff were aware of it. She further submitted that a memorandum bearing No. MAM/EAR/RTI/2020 dated 24/7/2020 was issued to Mrs.Geetanjali Kaisurkar, UDC and court clerk Jt.IV and the dealing hand submitted her affidavit wherein she has stated that despite of thorough search the files could not be traceable and in support of her contention PIO relied upon affidavit of Mrs. Geetanjali Kaisurkar. She further submitted that if the file is traced, the due information could be provided to Appellant.
11. I have scrutinized the records available in the file also considered the submissions of both the parties.
12. In the contest of the nature of information that can be sought from PIO, the Hon'ble Supreme Court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya has held at para 35;

“At this juncture, it is necessary to clear some misconception about the RTI Act. **The RTI Act**

**provides access to all information that is available and existing.** This is clear from the combined reading of section 3 and the definition of "information" and "right to information" under clause (f) and (j) of section 2 of the Act. **If the public authority has any information in the form of data or analysed data or abstracts or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act.** But where the information sought is not a part of the records of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which required drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice to an applicant. "

13. Yet in another decision, the Apex court in case of Peoples Union for Civil Liberties V/s Union of India, AIR Supreme Court 1442 has held

**"under the provisions of RTI Act Public Authority is having an obligation to provide such information which is recorded and stored** but not thinking process which transpired in the mind of authority which an passed an order".

14. Yet in another decision reported in AIR 2012 Pat 60; letters appeal no 1270 of 2009 in civil writ jurisdiction case 11913/2009; Shekarchandra Verma vs State Information Commissioner Bihar has held;

“in our view, the RTI Act contemplates furnishing of information which is available on record, but it does not go so far as to require an authority to first carry out an inquiry and collect, collate information and then to make it available to applicant.”

15. Hence according to above judgment of the Hon'ble Apex court, and Hon'ble other High Courts the PIO is duty bound to furnish the information **as available and as exist in the office records.**

16. On perusing the application dated 4/6/2019 it is seen that at 1(a) the Appellant has sought the all document submitted by following persons a)Gangadin Kevat, b) Jitendrakumar Sharma, c)Prafulkumar Sharma, d)Anjanakumar Sharma, e)Shivpuri kevat, f)Alindrakumar Kevat, g)Shankuntala Kewat, h)Premchandra Kevat to include their name in election roll in part 36 of Porvorim Constituency before 2012 election and BLO in charge to include the name and the Respondent PIO has replied in his reply dated 2/7/2019 given in terms of section 7 of RTI Act and also before First Appellate Authority and also before this Commission vide his affidavit dated 11/8/2020 that the same are weeded out. Hence it could be gathered that the said information is not presently available in the office records. Hence by subscribing to the ratios laid down by above courts, no any direction can be issued to Respondent PIO to provide the said information which is not available and existing in a records of a public authority.

17. With regard to information sought at point 1 (b) i.e certified copy of entire file to deletion of names which is reported as not traceable, it is pertinent to note that the Appellant has enclosed the copy of notice issued to Smt. Anjali Shetgaonkar by Jt. Mamlatdar & AERO 09 Porvorim AC dated 23/11/2012 and notice issued to Gangadin Kevat and 8 others dated 29/11/2012 in support of his contention and on perusal of the said notices it could be gathered that the same were pertaining to deletion of names. Hence one could gather based on said notices that the deletions of names proceedings were conducted. The respondent PIO have also admitted of having conducted the said proceedings. 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.
18. 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 “.

19. 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”.

20. Considering the above position and the file/documents as sought by the Appellant at serial No. 1(b) 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.

21. The facts of the case does not warrant levy of penalty on PIO as the record shows that PIO has responded the application of Appellant within stipulated time and his say has been upheld by Respondent no. 1 First Appellate Authority . The PIO herein has also supported his contention with documents and supported by her affidavit and that of dealing hand. As no convincing evidence produced on record by Appellant of having caused loss and detriment to him. Hence I am no inclined to grant relief sought at (b),(c) and (d) as sought by the Appellant.
22. 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 North-Goa at Panajim or through his authorized officer shall conduct an inquiry regarding the said missing files pertaining to point No. 1(b) of RTI application dated 4/6/19 in respect to deletions of names in part 36 of Porvorim constituency which is reported not available/not traceable in the office of Respondent no. 2 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. Copy of this order shall be sent to Collector of North-Goa at Panajim for information and necessary action.

3. The other relief are rejected.

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