

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

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**Shri Prashant S.P. Tendolkar,**  
State Chief Information Commissioner

**Appeal No.09/SCIC/2017**

Shri Sushant P. Nagvenkar,  
House No.C-312,  
Fondvem Ribandar  
Goa 403006.

..... Appellant

V/s

- 1) The Public Information Officer,  
Corporation of the City of Panaji,  
Panaji –Goa.
  - 2) The First Appellate Authority,  
Corporation of the City of Panaji,  
Panaji –Goa.
- ..... Respondents.

Filed on : 31/1/2017

Disposed on: 5/6/2018

**1) FACTS IN BRIEF:**

a) The appellant herein by his application, dated 14/9/2016 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO under several points therein. As the said application was not replied he sent said application under a covering letter on 20/10/2016.

b) According to appellant information which was sought was not furnished he filed first appeal to the respondent No.2, being the First Appellate Authority (FAA). The FAA issued

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notice of appeal for hearing on 13/12/2016 and subsequently on 17//12/2016 the appellant received the communication from PIO dated 15/11/2016.

c) It is the contention of appellant that FAA failed to pass any order within time and he has therefore landed before this commission in this second appeal u/s 19(3) of the act.

d) Notices were issued to the parties, pursuant to which they appeared. The present PIO on 3/6/2017 filed reply to the appeal annexing the copy of reply dated 15/11/2016 and submitted that the PIO has filed point wise reply to the appellant's application and further that the FAA has disposed the first appeal by order, dated 30/1 2017 and that the said order is acknowledged by the appellant on said date.He further state that the whatever information was available has been furnished.

e) In the course of hearing, the appellant filed on record the copy of the order passed by the FAA on 31/1/2017 along with his purported arguments. According to him the reply which is dated 15/11/2016 was in fact received by him only on 17/12/2017 and that the same is maliciously backdated to appear as if the information is furnished in time.

As regards the order of FAA it is the contention of appellant that the said order was passed much beyond the period available to the FAA for disposing the appeal.

The appellant has also annexed (i) copy of a sketch signed by city engineer of City Corporation of Panaji, hereinafter referred to as RESPONDENT AUTHORITY (ii) copy of NOC, dated 13/11/2008 jointly addressed to Assistant Engineer, S.D II of Electricity dept. Panaji,

Assistant Engineer, Sub division I, Div.II, PHE-(N)and Assistant Engineer, Sub division II,W.D.III(PHE),PWD, Tonca Carazalem, Goa, copy of which is sent to one Sachin Prabhakar Volvoikar at house no.3/66 Ribandar, Goa. (iii) a copy of Form A Licence, dated 17/5/2001 issued by respondent authority herein, (v) copy of letter dated 27/7/2016 by PIO to appellant herein , and (vi) a copy of letter, dated 17/5/2016 addressed to one Prabhavati P. Volvoikar.

With the above attachments the appellant has argued that the documents of house plan and survey plan is mandatory and has to be on record for issuance of the above annexures. As such according to appellant the answer of the PIO is not tenable and that the commission has the powers to direct the authority to make a search.

The appellant has also urged this commission regarding the disregard of the respondent authority in implementation of section 4 of the act.

f) As the information sought by the appellant at points (a) (c) and (d) were not furnished in view of non existence of the documents, which was so communicated to appellant by said reply dated 15/11/2016, the then PIO was directed by this Commission to file an affidavit in support of such contentions. Accordingly the PIO filed affidavit on 27/11/2017 affirming the contents of his reply dated 15/11/2016.

## **2) FINDINGS:**

a) On perusing the records and considering the rival contentions this commission finds that the application, dated 14/09/2016 filed u/s 6(1) of the act was not replied

within 30 days from the date of its receipt which is mandatory under the act. The said application was followed by a reminder on 20/10/2016 which was also not responded. The appellant filed first appeal on 23/11/2016 but the same was not disposed within the time stipulated. According to appellant the reply, dated 15/11/2016 which is the reply purported as u/s 7(1) was received by him on 17/12/2016. For considering the period in which the reply was furnished, this commission has directed the PIO to produce the outward register of the office to verify the date of dispatch of the said reply dated 15/11/2016. It is found that no letter/communication was dispatched to the appellant on 15/11/2016 or immediately thereafter. The only communication which is addressed to the appellant was dispatched by respondent Authority on 16/12/2016. Thus I find great force in the submission of appellant that though the response was dated 15/11/2016, the same was actually sent on 16/12/2016 and received by him on 17/12/2016.

There is another facet to the issue, that if the response was ready on 15/11/2016, then the same ought to have been so replied before the FAA, in the first appeal, which was filed later than 15/11/2016. This commission, without touching the merits of the order of FAA, finds that the PIO had not even bothered to file any reply before FAA.

In the above situation Commission find no force in the submission of PIO that the application dated 14/09/2016 was responded on 15/11/2016. The contentions of appellant that the application was not responded within time and that the said response, dated 15/11/2016 was back dated appears to have force.

b) Coming to the issue of dispensation of information, it is the contention of PIO that no inspection was carried out of the premises, nor any repair or renewal licence was issued to the structure, nor any construction licence was issued to the premises and hence the documents cannot be given. In other words the information is non dispensable in view of its non generation. Said facts are affirmed by the PIO on oath vide said affidavit filed on 27/11/2017. In this situation the question of issuance of any directions to trace the records of non generated/existing information is redundant. The ratio of the Hon'ble High Court of Delhi in the case of *Union of India V/s Vishwas Bhamburkar* as relied upon by the appellant is not applicable, as according to PIO records were never in existence.

c) The appellant in his arguments has relied upon copies of correspondence between the officers of respondent Authorities with their parties viz. **(i)** copy of a sketch signed by city engineer of City Corporation of Panaji, **(ii)** copy of NOC, dated 13/11/2008 jointly addressed to Assistant Engineer, S.D II of Electricity dept. Panaji, Assistant Engineer, Sub division I, Div.II, PHE-(N)and Assistant Engineer, Sub division II,W.D.III(PHE),PWD, Tonca Carazalem, Goa, copy of which is sent to one Sachin Prabhakar Volvoikar at house no.3/66 Ribandar, Goa. **(iii)** a copy of Form A Licence, dated 17/5/2001 issued by respondent authority herein, (v) copy of letter dated 27/7/2016 by PIO to appellant herein , and **(vi)** a copy of letter, dated 17/5/2016 addressed to one Prabhavati P. Volvoikar.

By referring to said communication the appellant wants this Commission to conclude and hold that records are existing. However, commission cannot accept said submission being based on presumption and surmises. But an attempt can be made to trace the information sought by inspecting the records of such communication, if it leads to the information as sought as suggested by the appellant.

d) In the above backdrop, Commission finds that the application u/s 6(1) of the act was not responded to by the PIO within the stipulated time. The information sought by appellant being not in existence and with a view to explore the availability of relevant information, the files pertaining to the communication as replied upon by appellant are made available to the appellant for inspection.

e) Considering the above situation the above appeal is required to be disposed with the following:

**ORDER**

The PIO shall grant to the appellant inspection of the files pertaining to **(i)** Sketch signed by city engineer of City Corporation of Panaji **(ii)** NOC bearing no.F.9/CCP/ENG/NOC/2008-09/3857, dated 13/11/2008 jointly addressed to Assistant Engineer, S.D II of Electricity dept. Panaji, Assistant Engineer, Sub division I, Div. II, PHE-(N) and Assistant Engineer, Sub division II,W.D.III(PHE),PWD, Tonca Carazalem, Goa, copy of which is sent to one Sachin Prabhakar Volvoikar at house no.3/66 Ribandar, Goa.**(iii)** Form A Licence, No.T/O/457, dated 17/5/2001 issued by

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respondent authority herein, and **(iv)** Letter no.F19/CCP/ENG/RTI/ 2016-17/3721, dated 27/7/2016 by PIO to appellant herein and (vi) Letter no.3/66/TAX/2016-17/CCP/2572, dated 17/5/2016 addressed to one Prabhavati P. Volvoikar.

The parties shall report compliance of this order on 3/7/2018 at 10.30 a.m. for further orders.

Sd/-  
**(Prashant S.P. Tendolkar )**  
State Chief Information Commissioner  
Goa State Information Commission  
Panaji - Goa

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4) The First Appellate Authority,  
Corporation of the City of Panaji,  
Panaji –Goa.

..... Respondents.

Date: 29/01/2020

**O R D E R**

1) By order dated 05/06/2018, this Commission while disposing the above appeal has directed the PIO to grant inspection of the files pertaining **(i)** Sketch signed by city engineer of City Corporation of Panaji **(ii)** NOC bearing no.F.9/CCP/ENG/NOC/2008-09/3857, dated 13/11/2008 jointly addressed to Assistant Engineer, S.D II of Electricity dept. Panaji, Assistant Engineer, Sub division I, Div. II, PHE-(N) and Assistant Engineer, Sub division II, W.D.III (PHE), PWD, Tonca Carazalem, Goa, copy of which is sent to one Sachin Prabhakar Volvoikar at house no.3/66 Ribandar, Goa.**(iii)** Form A Licence, No.T/O/457, dated 17/5/2001 issued by respondent authority herein, and **(iv)** Letter no.F19/CCP/ ENG/RTI/ 2016-17/3721, dated 27/7/2016

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by PIO to appellant herein and (vi) Letter No.3/66/TAX/2016-17/CCP/2572, dated 17/5/2016 addressed to one Prabhavati P. Volvoikar.

2) The said inspection was ordered as this Commission found that the appellant's application/s 6(1) of the Right to Information Act 2005 (Act for short) was not decided within time and also holding that the information was not in existence. With a view to explore the availability to the satisfaction of appellant, the files pertaining to the Communication as relied upon by the appellant were ordered to be made available for inspection of appellant. The matter was thereafter posted on 03/07/2018 for compliance of the said orders.

3) The appellant by his application dated 10/07/2018 submitted that in respect of point (ii) of the order there was compliance and that in respect of point (i) the file was not available so also file at point (iii). In respect of files on point iv) and (v) there was no inspection furnished.

The appellant has further submitted that some of the records, which are required to be maintained being mandatory, were not existing in the file and absence not explained properly. It is his grievance that the PIO has failed to comply with the orders dated 05/06/2018 and has mislead the commission. It is also the contention of appellant that it was never the contention of PIO that the file records pertaining to subject was not available with respondent Authority.

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4) Subsequently by his affidavit dated 05/02/2019 PIO submitted that the files in respect of point (2), (4) and (5) were shown. In respect of point (1) it is submitted that the same is not a document of corporation and that in respect of point (3) the same is not traceable.

5) The appellant has also filed his arguments. On perusal of the records and considering the submissions, contents of affidavit and rival contentions, the point to be determined is whether the PIO has complied with the order of this Commission dated 05/06/2018.

6) While passing the said order dated 05/06/2018 at para 2(d) this Commission has given the background under which the said order for inspection was passed. In said para 2 (d) it is observed:

*“d) In the above backdrop, Commission finds that the application u/s 6(1) of the act was not responded to by the PIO within the stipulated time. The information sought by appellant being not in existence and with a view to explore the availability of relevant information, the files pertaining to the communication as relied upon by appellant are made available to the appellant for inspection.*

7) Thus it was found in the course of hearing of appeal that according to PIO, the information as sought was never in existence. On the contrary it was the contention of appellant therein that for issuance of a power NOC for connection, the documents should exist. In other words, the copy of information sought is a pre requisite for certain action of

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CCP and hence should exist with it. The PIO in his reply dated 15/11/2016 has informed the appellant that the information sought does not exist. Thus it was the consistent stand of PIO that the information as sought does not exist. It is only with a view for reconfirmation by appellant that the inspection was ordered vide said order dated 05/06/2018.

8) In compliance to the order, dated 5/6/2018 the PIO has once again submitted that the records/documents sought does not exist. It is also the same stand of appellant that the he could not inspect the same as the same were not existing in the records. Considering the same, this Commission concludes that the information as was sought does not exist. There is no evidence to hold that the information actually existed at some point of time and that now it is made to disappear. Hence, the ratio as laid down in the case of Shri Vishwas Bhamburkar as relied upon by the appellant cannot be applied to this case.

9) It appears that the appellant want to suggest that the respondent authority is involved in certain illegality in issuing certain NOC without inspection of site and/or collecting the required documents. Such contention may be true also but the redressal of such illegality in functioning of respondent authority is beyond the purview of the act. The appellant may take up the same with appropriate authority under the relevant law controlling the respondent authority.

10) Considering the fact that the information as sought is not in existence, nothing further remains to be decided.

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However, this commission finds it appropriate to direct the respondent authority i.e. Corporation of City of Panaji to comply with the mandate of section 4 of the Right to Information Act 2005.

11) In the above circumstances the present appeal stands disposed with a direction to corporation of city of Panaji, to comply with the requirements and mandate of section 4 of The Right to Information Act 2005 at the earliest and in any case within 120 days from the date of receipt of this order.

Proceedings closed.

Order to be communicated to parties.

Sd/-  
**(Shri. P. S.P. Tendolkar)**  
Chief Information Commissioner  
Goa State Information Commission  
Panaji –Goa