

GOA STATE INFORMATION COMMISSION

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Shri Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 35/2021/SIC

Cristina Sequeira,
H. No. 239, Varchi Halli,
Near Church, Sanquelim – Goa.

..... Appellant

v/s

1. The Public Information Officer,
The Chief Officer,
Sankhali Municipal Council,
Sanquelim – Goa.

2. The First Appellate Authority,
Directorate of Municipal Administration,
Panaji – Goa.

..... Respondents

Filed on : 11/02/2021

Decided on : 23/09/2021

Relevant dates emerging from appeal:

RTI application filed on	: 24/9/2020
PIO replied on	: 28/10/2020
First appeal filed on	: 17/11/2020
First Appellate Authority Order passed on	: 14/12/2020
Second appeal received on	: 11/02/2021

ORDER

1. The Appellant Cristina Sequeira alias De Souza filed second appeal dated 11/02/2021 under section 19 (3) of the Right to Information Act, 2005 (hereinafter to be referred as Act), against Respondent No. 1, Public Information Officer (PIO), Chief Officer, Sankhali Municipal Council, Sanquelim Goa and Respondent No. 2, First Appellate Authority (FAA), Directorate of Municipal Administration, Panaji Goa.
2. The Appellant aggrieved by the response of the PIO and non furnishing of information has preferred this appeal praying for directions to the PIO to furnish correct information to the Appellant as mandated in the Act.

3. Brief facts leading to second appeal, as contended by the Appellant are :-
- a) That the Appellant vide application dated 29/09/2020 sought from PIO following information - "what documents does Ana Lobo has to claim her name on the house tax, or what documents did she produce to get the house tax on her name".
 - b) That the Appellant filed the said application in order to get the details of the illegal house tax transfer in the name of Ana Lobo which actually belongs to the Appellant. That the PIO did not respond to the RTI application within the stipulated period of 30 days.
 - c) That being aggrieved the Appellant filed first appeal dated 17/11/2020 before the FAA. The FAA vide order dated 14/12/2020 directed the PIO to trace the records and furnish information to the appellant within 15 days, free of cost. However the PIO did not comply with the order of the FAA.
 - d) That the appellant made several visits to the PIO seeking the information. However, the PIO did not furnish the information and the Appellant is compelled to file second appeal dated 11/02/2021.
4. The appeal was admitted and notice was sent to the concerned parties for appearance alongwith the say, if any. The Appellant Ms. Cristina Sequeira appeared alongwith her daughter Ms. Maria Sequeira and filed submission dated 27/7/2021. The PIO was represented by Adv. M.P. Sawaikar, Adv. T. Vaingankar and Adv. K. Gaude. Reply dated 24/08/2021 was filed on behalf of the PIO and Appellant filed another submission dated 24/08/2021. Arguments of both the sides were heard on 02/09/2021.

5. It is stated on behalf of the PIO in written submission as well as in oral arguments that the said house referred by the Appellant was registered for the purpose of house tax in the then Village Panchayat Sankhali, Harvalem, Viridi. Thereafter the said Village Panchayat was upgraded to Sankhali Municipal Council. In the meanwhile, records maintained by the Village Panchayat got damaged and destroyed due to floods. That it is possible that the documents if any, regarding transfer the house tax of the said house might have got damaged and destroyed. Therefore the PIO is not in a position to provide the copies of the documents sought by the Appellant and the PIO has informed the same to the Appellant vide reply dated 28/10/2020.

6. Appellant, on the other hand, stated that the said house is ancestral property of the Appellant owned by her mother-in-law Ana Fernandes and the Appellant has been paying the house tax every year. That the Appellant has all necessary documents with her regarding the ownership of the house. However, the Appellant, on scrutiny came to know that the name in the house tax records is changed from Ana Fernandes to Ana Lobo. The Appellant also stated that she is the only legal heir after the death of her mother-in-law and husband. That she has on many occasions has applied for change of name in house tax records from her mother-in-law, i.e. Ana Fernandes to her name alongwith relevant documents. However, the Panchayat officials then, and Municipal Council staff now, did not process her application. The Appellant has also stated that she has all relevant documents with her regarding the ownership of house.

7. It is the considerate opinion of the Commission that documents may get damaged/destroyed due to floods or any other reason. However, it is the responsibility of the concerned public authority to reconstruct damaged/destroyed documents within the specific period. From the reply submitted by the respondent, it is clear that even the Respondent is not sure about the reason for not tracing of

the document. As submitted by Respondent, floods may be one of the possibility. Whatever may be the reason, citizen should not be made to suffer due to the damaged/destroyed documents. It is also to be noted that the FAA in his order dated 14/12/2020 has directed the PIO to trace the records and furnish the information within 15 days. The Respondent has not shown in the reply any efforts made to trace the records, pursuant to the order of the FAA. Mere excuse that the records may have been destroyed in floods cannot be a valid reply unless respondent shows sincere efforts in tracing the record and take in a clear and concrete steps.

8. The Hon'ble High Court of Delhi in Writ Petition (C) 3660/2012 of CM 7664/2012 (Stay), in the case of Union of India v/s. Vishwas Bhamburkar, has held in para 7 :

"This can hardly be disputed that if certain information is available with public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily the information which is at some point of time or the other was available in the records of the government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by the department for destruction of old record. Therefore whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information sought by the applicant cannot be traced or was never available with the government or has been destroyed in

accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing inability to provide the desired information”.

The Hon'ble Court further held –

"Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility of the loss of the record and take appropriate departmental action against the officers/official responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act”.

9. Para 8 of the same Judgment reads –

"Since the Commission has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/readily traceable/currently traceable”.

10. The judgment cited above is self explanatory and no more comments are required to be recorded by the Commission. In the light of the above discussion and records, brought before this Commission, the said appeal is allowed with the following order :-

(a)The appeal is allowed.

(b)The PIO is directed to trace the records and furnish the information sought by the Appellant within 15 days from the receipt of this order, free of cost.

(c) The Director, Directorate of Municipal Administration is directed to ensure that proper enquiry is conducted into the claim of records of Sankhali Municipal Council being damaged/destroyed due to flooding and if it is found that the records are damaged/destroyed, take necessary corrective measure for reconstruction of the said records.

(d) Registry is directed to send a copy of this order to the Director, Directorate of Municipal Administration.

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/-

(Sanjay N. Dhavalikar)
State Information Commissioner
Goa State Information Commission
Panaji - Goa