

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 145/2020

Shri. Oswald Fernandes,
H. No. 1141, Muxivaddo,
Curtorim, Salcete-Goa

...Appellant

V/s

1. The Public Information Officer (PIO),
Mr. Allauddin Maniyar,
Village Panchayat of Cavelossim,
Cavelossim, Salcete-Goa
 2. First Appellate Authority (FAA),
Mr. Amlesh Shivoikar ,
Block Development Officer-1,
Office of the BDO, Margao-Goa
-Respondents

Filed on:- 15/09/2020

Decided on: 30/07/2021

Relevant dates emerging from appeal:

RTI application filed on	: 05/06/2020
PIO replied on	: 14/08/2020
First appeal filed on	: 10/07/2020
First Appellate authority order passed on	: 03/09/2020
Second appeal received on	: 15/09/2020

ORDER

1. The Second Appeal filed by the Appellant Shri. Oswald Fernandes, R/o. Muxivaddo, Curtorim-Salcete, Goa against Respondent No. 1, PIO Village Panchayat Cavelossim, Shri. Allauddin Maniyar and Respondent No. 2 FAA, BDO Margao, under u/s 19(3) of Right to Information Act, 2005 (RTI Act, 2005) came before this Commission on 15/09/2020.

2. Brief facts leading to the second Appeal are as under :-

a) The Appellant Shri. Oswald Fernandes vide application dated 5/06/2020 filed u/s 6(1) of the RTI Act, 2005 sought from Respondent No. 1, PIO, following information:-

- (i) Copies of the documents including applications filed by the owners Mr. Cruz Cardozo and or Sevana Zemira Jacques requesting allotment of House Numbers in Tibet ward of Village Cavelossim.
- (ii) Copies of Panchayat Resolutions adopted to allot house Nos. 320/A, 320/B, 320/C including names of person in whose name the said house numbers were allotted.
- (iii) Copies of approved plans by TCP and Village Panchayat including occupancy certificate granted by Village Panchayat in respect of the said structure.
- (iv) Information whether all those structures with house numbers are in existence and or the said house numbers were granted to single structures.
- (v) Copies of receipts of payment of house tax.
- (vi) Copies of all the documents which are connected to but not mentioned herein above.

b) It is the contention of the Appellant that he filed first appeal before the FAA as the PIO failed to issue documents within the prescribed time limit.

- c) It is the contention of the appellant that during the hearing, the PIO produced copies of documents alongwith the covering letter. However one important document regarding house No. 320/C was not furnished, instead a copy of complaint filed to PI Colva regarding theft of missing documents was produced.
- d) It is the contention of the Appellant that documents which he had applied for under RTI application before PIO went missing as per the Complaint filed by the PIO.
- e) It is the contention of the Appellant that he is in possession of a document received under RTI, which reveals that the PIO has allowed Mr. Cruz Cardozo to inspect proceeding books without any watch and then the said documents went missing. One of the document (resolution) went missing is regarding house No. 320/C granted without following due process to Mr. Cruz Cardozo, who was allowed to inspect all books.
- f) It is the contention of the Appellant that the FAA failed to direct the PIO to furnish all the documents sought by the Appellant. The Resolution of House No. 320/C is critical as the Appellant has a Complaint pending against illegalities related to the said house before various authorities. It is also the contention of the Appellant that the FAA disposed the matter

without holding the PIO responsible for the loss of documents.

g) It is the contention of the Appellant that the FAA wanted to close the first Appeal without issuing a copy of the said resolution to the Appellant, which the Appellant objected. However, without recording Appellant's objection, FAA closed the Appeal.

3. In the above background the Appellant being aggrieved by the action of Respondent No. 1 PIO and Respondent No. 2 FAA, approached this Commission u/s 19(3) of the RTI Act, 2005 on 15/09/2020 with various prayers including furnishing of the information.
4. After notifying the concerned parties the matter was taken up for hearing. Pursuant to the notice of this Commission, the Appellant appeared before the Commission. Respondent No. 1 PIO filed reply on 9/02/2021 and preferred not to attend subsequent hearings. Respondent No. 2 FAA filed written submissions praying for exemption from the Appeal.
5. I have perused the replies and submissions made by both the Respondents. It is observed that part information is furnished to the Appellant, though after the prescribed limit of 30 days. According to the Respondent PIO, the documents related to the house of Cruz Cardozo are not found in the Panchayat Office. On this background the PIO has written a letter to Police Inspector, Colva Police Station, dated 6/08/2020 requesting him to register a Complaint/ FIR.

6. It is seen from the Records that the Respondent No. 1 PIO in a reply sent to the Appellant dated 14/08/2020 has stated that, " In respect of house no. 320/C the house No. was allotted to Cruz Cardozo as per records, the application inwards on 25/10/2011 against the entry no. 704 in inward Register, the application is missing and resolution page is torn in the monthly meeting proceeding book and the FIR is filed in Colva Police Station on 06/08/2020. Copy of Inward Register and FIR is enclosed."

7. Respondent No. 1 PIO in his reply dated 09/02/2021 filed before the Commission has stated:-
 - a) That the information sought in regards to house no. 320/C, it was observed that in proceedings book of month meeting dated 28/10/2011 only two pages i.e. 142 and 162 are missing and not available and in respect of which Complaint FIR dated 06/08/2020 after verification.
 - b) That further, the connected house tax filed for year 2010-2011 is also missing and cannot be traced.
 - c) That apart from this, 16 applications under RTI are disposed by providing information and Appellant saw for himself that no such documents were available and missing.
 - d) The documents sought are as old as 2011. Before the appointment of Respondent as Secretary for Cavellossim, there were several Secretaries. That the Respondent is incharge of documents since December 2018 and cannot be made responsible for loss or

damage of documents prior to his holding position as Secretary.

e) Under Right to Information Act 2005, the definition (j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:-

- (i) Inspection of work, documents, records;
- (ii) Taking notes, extracts or certified copies of documents or records;
- (iii) Taking certified samples of material;
- (iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

Therefore whatever is not accessible does not amount to information and to buttress this Respondent gave inspection and showed the missing documents and also filed FIR in this regard.

8. The Appellant Shri. Oswald Fernandes, in a rejoinder filed before this Commission dated 27/07/2021 has contended that the replies of both the Respondents are false and Respondent No. 1 PIO, being responsible and custodian of records and documents has completely neglected his duties. Appellant has also contended that the PIO being custodian of documents in the Panchayat Office, should be held responsible for missing of

documents related to house No. 320/C. The Appellant has also contended that due to the said missing of those documents, important resolution of legally constructed structures and house tax records belonging to several other persons might have gone missing only to protect the illegal grant of house no. 320/C.

9. After detail perusal of all the submissions and documents the Commission has arrived at certain findings as under.

a) The PIO realized about the missing of documents related to house No. 320/C only after the Appellant filed RTI application. The PIO had earlier allowed the inspection to Mr. Cruz Cardozo.

b) Respondent PIO wrote a letter to Police Inspector, Colva Police Station dated 06/08/2020, requesting him to Register a Complaint / FIR. However, the Commission is not updated by the Respondent regarding the inquiry of the said Complaint.

c) Since the relevant documents are missing from Panchayat Office and FIR is lodged, the Commission cannot issue directions to the PIO to furnish remaining information which according to PIO, does not exist in the Panchayat Office.

d) However, being the Secretary, of the Village Panchayat, the PIO is the Custodian of all documents and records maintained by his Office, should do proper follow up of his Police Complaint.

10. In a similar matter the Hon'ble High Court of Delhi in writ petition (C) 36609/12 and CM 7664/2012 (stay) in the 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 effort 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.”

11. Considering the above position and the said documents are not traceable till date, and the FIR being registered in the Police Station, the Commission is unable to pass any direction to the PIO to furnish information. However, that itself does not absolve the PIO or the Public Authority concerned herein of his responsibility

under this Act or the Act governing the Village Panchayat under which such document is required to be maintained. And therefore, appropriate order is required to be passed so that the liability is fixed and records are traced. Also, it has to be noted that the FAA should have looked into the first Appeal with serious application of mind and should have considered the fact that the PIO has furnished only part information. However, the FAA disposed the Appeal in a casual manner.

12. In the above circumstances and in the light of above discussion, I dispose the Appeal with following:-

- a) Respondent No. 2 the FAA, BDO, Margao is directed to monitor the inquiry of the FIR/Police Complaint filed by the PIO on 06/08/2020 in Colva Police Station.
- b) The Director of Panchayat is directed to initiate appropriate proceedings against the Secretaries of the said Village Panchayat, responsible for missing of the said documents.
- c) Issue showcause notice to the Respondent No. 1 PIO Shri. Allauddin Maniyar and the PIO is further directed to showcause as to why penalty as provided under section 20 (1) and 20(2) of the RTI Act, should not be imposed against him.
- d) In case the PIO is transferred, the present PIO shall serve this notice alongwith the order to the then PIO and produce the acknowledgement before the Commission on or before the next date of hearing,

alongwith the full name and present address of the then PIO.

e) Respondent No. 1 PIO Shri. Allauddin Maniyar is hereby directed to remain present before this Commission on 27/08/2021 at 10.30 a.m. alongwith the reply to the Showcause notice. The Registry is directed to initiate penalty proceedings and send a copy of this order to the Director, Directorate of Panchayat, Government of Goa.

13. Hence the Appeal Proceedings stand disposed and closed.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Pronounced in the open court.

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