

# GOA STATE INFORMATION COMMISSION

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**Shri. Sanjay N. Dhavalikar**, State Information Commissioner

## **Appeal No. 82/2021/SIC**

Shri. Bandhagit Nadaf,  
R/o. Shop No. 9, 3<sup>rd</sup> floor,  
Paes Avenue Bldg., F.L. Gomes Road,  
Vasco-Da-Gama, Goa

.....Appellant

**V/s**

1. Public Information Officer (PIO),  
Krishna Gaude, Village Panchayat Secretary,  
Office of the Village Panchayat of Sancoale,  
Sancoale-Goa 403710
2. The First Appellate Authority,  
Shri. Prasiddh P. Naik,  
Office of the Block Development Officer,  
Mormugao Block, 2<sup>nd</sup> floor,  
Our lady of Guia Building,  
Vasco-Da-Gama, Goa 403802

..... Respondent

Filed on : 06/04/2021

Decided on : 28/01/2022

### **Relevant dates emerging from appeal:**

RTI application filed on	: 12/01/2021
PIO replied on	: 01/02/2021
First appeal filed on	: 05/02/2021
FAA order passed on	: 25/02/2021
Second appeal received on	: 06/04/2021

## **ORDER**

1. The brief facts of this appeal are that the appellant vide application dated 12/01/2021 sought under section 6(1) of the Right to Information Act, 2005 (for short, the Act), information on five points from Respondent No. 1 Public Information Officer (PIO). Not happy with the information furnished by the PIO vide letter dated 01/02/2021, the appellant filed appeal before Respondent No. 2 first Appellate Authority (FAA) on 05/02/2021. The FAA vide order

dated 25/02/2021 directed PIO to furnish point wise information to appellant within 10 days.

2. It is the contention of the appellant that the PIO vide letter dated 03/03/2021 informed appellant that the information is not traceable. Being aggrieved, the appellant preferred second appeal before the Commission against PIO and FAA, praying for the information, penal action against the PIO, compensation and inspection of documents.
3. The concerned parties were notified and the matter was taken on board for hearing. The appellant appeared in person and filed a submission dated 02/09/2021. The PIO, though remained absent initially, later appeared and filed reply on 26/10/2021 and affidavit on 21/12/2021. Appellant as well as PIO delivered arguments on 30/11/2021.
4. The appellant vide appeal memo stated that the information sought by him vide application dated 12/01/2021 has to be available in the office of the PIO. However, PIO, being custodian of records, has deliberately provided vague information and refused to furnish correct information while acting in connivance with the corrupt elements to safeguard his corrupt activity. The Act requires PIO to maintain the records sought by the appellant, hence the appellant must be provided with the information. Further, vide submission dated 2/09/2021 appellant stated that no satisfactory response was received from the PIO even after the clear direction from the FAA to furnish the information. The PIO cannot escape the obligations and duties and therefore he should be penalised for failing to furnish the information.
5. On the other hand, the PIO vide reply dated 26/10/2021 claimed that he has issued the available information vide letter dated

01/02/2021. That he could not trace the remaining information from the records of the Village Panchayat and accordingly replied the appellant. That the PIO has not rejected the application of the appellant. Further, vide affidavit filed on 21/12/2021, the PIO stated that he is in receipt of the said application from the appellant asking information pertaining to house tax of H. No. 810 pertaining to Shri. John Baptisto Godinho or any of his family members. Upon receiving this application he along with office staff searched the records, however the information could not be traced. Also, that, as per form No. 8 Demand and Collection Register the house number 810 is not registered in the name of John Baptisto Godinho or any of his family members. In view of this he swears on affidavit that the information is not available in his office.

6. The Commission has perused the submissions and heard the arguments of both the sides. The appellant has requested for information pertaining to issuance of house tax and other documents of House No. 810, allegedly registered in the name of John Baptisto Godinho or any of his family members. In reply, the PIO has stated that House No. 810 is not registered in the name of John Baptisto Godinho or any of his family members and that the other information pertaining to the said house is not available in his Office. The PIO has filed an affidavit stating the same. The PIO has not claimed that the said information was never available in his office. According to the PIO, the said information is more than 50 years old, he took charge of Village Panchayat office on 3/10/2017, hence he cannot be held responsible for non availability of the records pertaining to the earlier period.

It appears that the records were generated in the office of village Panchayat Sancoale, hence the information sought was

existing in the office of the PIO. In this case it is only the lapse and failure of the authority to preserve the records which has lead to non traceability of the information. It is obvious that the information sought by the appellant was available in the office of PIO at some point of time and the same is not available now. The appellant seeking this information has suffered harassment while pursuing this matter before different authorities. However there is no conclusive evidence to hold the present PIO responsible for the non traceability of the information.

7. 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 :

*"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”.*

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. Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said*

*information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/ office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the government at some point of time or not. After all, it is quite possible that the required information may be located if a thorough search is made in which event, it could be possible to supply it to the applicant. Fear of disciplinary action, against the person responsible for loss of the information, will also work as a deterrence against the wilful suppression of the information, by vested interests. It would also be open to the Commission, to make an inquiry itself instead of directing an inquiry by the department/ office concerned. Whether in a particular case, an inquiry ought to be made by the Commission or by the officer of the department/ office concerned is a matter to be decided by the Commission in the facts and circumstances of each such case.”*

8. The Hon'ble High Court of Delhi, in the same judgment, while emphasising on the nature and extent of inquiry which can be ordered by the Commission, has held:-

*“ 10. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. The interim order dated 1.6.2012 stands vacated. In my view, the inquiry conducted by the petitioner in compliance of the order passed by the Commission on 17.4.2012 was not at all satisfactory. It is, therefore, directed that a thorough and meaningful inquiry in terms of the provisions of the directions of the Commission be carried out by an officer not below the rank of a Joint Secretary to the Government*

*within eight weeks from today and a copy each of the said report shall be provided to the Commission as well as to the respondent before this Court.”*

9. Considering the situation of the present case vis-a-vis the ratio laid down by the Hon'ble High Court of Delhi, the Commission conclude that no directions can be issued to the PIO to furnish the remaining information. However, that itself does not absolve the PIO and the Public authority herein of the responsibility of furnishing the information to the appellant. An appropriate order is required to be passed so that the liability is fixed and the records are traced. Also the fact of the matter does not warrant penal action against the PIO as he has affirmed on oath that he has searched the office records and the same could not be traced. The appellant has prayed for compensation for harassment he suffered, however he has not brought to the notice of the Commission the nature and intensity of the harassment. The appellant has also prayed for the inspection of documents available in the PIO's office, the said prayer may be granted to the appellant.

10. In the light of above discussion and after considering all the facts brought on record, the appeal is disposed with the following order:-

a) The appellant, if so desires may approach the PIO for the inspection of records pertaining to his application dated 12/01/2021, within 15 days from the receipt of this order and the PIO is directed to provide for such an inspection, if desired by the appellant as mentioned herein.

b) The Director of Panchayat, Government of Goa, is directed to conduct a thorough inquiry into the

missing/loss of documents pertaining to the information sought by the appellant vide application dated 12/01/2021. The Director shall conduct the inquiry himself or through his authorised officer, within four months from the receipt of this order.

c) The Director of Panchayat shall initiate appropriate proceedings against the person responsible for the loss/misplacement of records, as per service conditions.

d) The right of the appellant to seek the said information from the PIO is kept open, in case if the said file is traced.

e) The Registry is directed to send a copy of this order to the Director of Panchayat, Panaji-Goa

Proceeding 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/-

**(Sanjay N. Dhavalikar)**

State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa