

**GOA STATE INFORMATION COMMISSION**

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**Appeal No. 97/2022/SCIC**

Mrs. June Luis,  
Anchorage, 322, Munang Waddo,  
Assagao, Bardez-Goa 403507.

.....Appellant

V/S

1. The Public Information Officer,  
Office of the Administrator of Commuindades,  
South Zone,  
Old Collectorate Building,  
Margao-Goa 403601.

2. The First Appellate Authority,  
The Additional Collector-I of South Goa,  
Collectorate of South Goa,  
Margao-Goa 403601.

.....Respondents

**Shri. Vishwas R. Satarkar**

State Chief Information Commissioner

**Filed on: 29/03/2022**

**Decided on: 19/07/2022**

**FACTS IN BRIEF**

1. The Appellant, Mrs. June Luis, r/o. Anchorage, 322, Munang Waddo, Assagao, Bardez-Goa by her application dated 30/06/2021 (inwarded on 02/07/2021), filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO) Office of Administrator of Comunidades of South Zone at Margao Goa.
2. Since the said application was not responded by the PIO within stipulated time, deeming the same as refusal, the Appellant filed first appeal before the Additional Collector, South Goa District at Margao-Goa being the First Appellate Authority (FAA).
3. The FAA by its order dated 15/11/2021 allowed the first appeal and directed the PIO to provide the inspection and furnish the

purported information within 30 days from the date of receipt of the Order.

4. Since the PIO failed and neglected to comply the order of the FAA and furnish the information, the Appellant landed before the Commission with this second appeal under section 19(3) of the Act alongwith request for condonation of delay.
5. Notice was issued to the parties, pursuant to which the representative of the PIO, Ms. Thereza Fernandes, Escrivao of Commuindade of Mormugao appeared and placed on record the reply of the PIO on 10/05/2022, representative of FAA, Mr. Walter Rodrigues appeared, however opted not to file any reply in the matter.
6. Perused the pleadings, reply, scrutinised the documents on record and considered the submissions of the Appellant.
7. Mr. S.J.F. Correia, learned advocate appearing on behalf of the Appellant, submitted that the he did not receive any communication or response from the PIO nor PIO complied the order of the FAA dated 15/11/2021, therefore the PIO has acted negligently and prayed that the PIO be directed to furnish the information and also emphasised to impose penalty on the PIO for non furnishing of the information sought for.
8. On the other hand, the PIO through his reply contended that on receipt of the RTI application since no record of existence of the purported file is available in the office of Administrator of Comunidades, South Zone at Margao and considering it pertains to Comunidade of Mormugao, he had transferred the said application to Ms. Thereza Fernandes, the Escrivao of Comunidade of Mormugao under section 5(4) of the Act.

Further according to him, the Escrivao by reply dated 12/08/2021 informed that process No. 6 of 1965 of Comunidade

of Mormugao is not found in the archive office of the Comunidade of Mormugao and also not traceable in the Mormugao section office and to substantiate his case he produced on record the copy of Memorandum dated 26/07/2021 and reply of the Escrivao dated 12/08/2021.

9. On perusal of Memo dated 26/07/2021 issued by the PIO alongwith RTI application to the Escrivao of Comunidade of Mormugao, it is categorically mentioned that, since the information is not available in the record of the Office of Administrator of Comunidade South Zone at Margao, he was seeking the assistance under section 5(4) of the Act to provide the information to the Appellant.
10. On perusal of the reply filed by Ms. Thereza Fernandes, Escrivao of Comunidade of Mormugao to the PIO dated 12/08/2021, it is categorically mentioned that, she made all efforts to search the file in the office of Mormugao section office with the help of one Denzyl Vaz, however the said file could not be traced.
11. Moreover on perusal of the order of the FAA dated 15/11/2021 particularly the operative part of the said order reads as under:-

*"The Appeal dated 13/09/2021 filed by the Appellant is hereby allowed. The Respondent is hereby directed to make a **thorough search of the said file** and provide inspection and furnish the certified copies of the said file to the Appellant within a period of 30 days from the date of this Order. The present proceedings are accordingly disposed off in terms of above."*

From the plain reading of the above, it indicates that the FAA was also not fully convinced about the availability of information and therefore he directed the PIO to make a thorough search of the said file.

12. It is also to be noted that the information pertains to the year 1965, which is sought now after the span of about 56 years and it is quite probable that the records may not be available to them.

13. While considering the scope of information which can be furnished under the Act, the Hon'ble Supreme Court in the case **Central Board of Secondary Education v/s Aditya Bandopadhyay (Civil Appeal No. 6454/2011)** has observed :-

*"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a 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 record 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."*

14. In a similar judgement the Patna High Court in the case **Shekhar Chandra Verma v/s State Information Commissioner (Letter Patent A. No. 1270/2009)** has held that:-

*"10. In our view, the RTI Act contemplates furnishing of information which is available on records, but it does*

*not go so far as to require an authority to first carry out an enquiry and thereby 'create' information, which appears to be what the information seeker had required of the appellant."*

15. In the instant case, records reveals that the PIO has tried to locate the information from his own office and after having found to be not held by him, he has appropriately transferred the RTI application under section 5(4) of the Act, to obtain the information from the Escrivao of Commuindade of Mormugao. However, inspite of their best efforts the same could not be traced. As far as the RTI Act is concerned, it can only facilitate in providing information to the citizen in case if one seeks information which is available with the public authority in material form, as the information is untraced it is not possible to disclose it.
16. However, parting with the matter the Commission is of the view that, the approach of the PIO appears to be very casual and trivial in dealing with RTI matters. The PIO failed to respond the RTI application within time. He also failed to file his say/reply before the FAA. The representative of the PIO appeared once before the Commission and has remained absent all throughout thereafter. Thus shown lack of concern to the process of this Commission and not discharged his burden, that he acted diligently and reasonably. Therefore the Commission warn the PIO that henceforth he should discharge his duties with more diligent and cautious manner.
17. Considering the facts and the ratio laid down by various courts, I find that the information being not available cannot be furnished. Any order to that effect shall be redundant and unenforceable. In view of the above I pass following:-

## **ORDER**

- The appeal is dismissed as redundant.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-

**(Vishwas R. Satarkar)**

State Chief Information Commissioner