

**GOA STATE INFORMATION COMMISSION**

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

**Appeal No. 12/2022/SIC**

Shri Nilesh Raghuvir Dabholkar,  
R/o. H.No. 275/2 (New) Dabholwada,  
Chapora, Anjuna,  
Bardez-Goa. 403507

-----Appellant

**v/s**

1. The Public Information Officer,  
Awal Karkun,  
Office of the Mamlatdar of Bardez Taluka,  
Mapusa, Bardez-Goa.

2. The Mamlatdar of Bardez Taluka,  
First Appellate Authority,  
Mapusa Bardez-Goa.

-----Respondents

**Relevant dates emerging from appeal:**

RTI application filed on	: 05/07/2021
PIO replied on	: 25/08/2021
First appeal filed on	: 04/10/2021
First Appellate Authority order passed on	: Nil
Second appeal received on	: 10/01/2022
Decided on	: 15/12/2022

**ORDER**

1. The appellant herein under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') had sought information on three points from Respondent No. 1, Public Information Officer (PIO). It is the contention of the appellant that PIO furnished incomplete information. Being aggrieved by the action of PIO, he filed appeal before First Appellate Authority (FAA). The first appeal was not heard by the FAA, hence he approached the Commission by way of second appeal.
2. The concerned parties were notified, pursuant to the notice, appellant appeared pressing for complete information and penal action against the respondents. Smt. Yogita Velip, PIO appeared in person and undertook to furnish additional information. Subsequent to her transfer, Shri. Rupesh Kerkar, PIO appeared and filed reply on 15/09/2022. Appellant filed reply cum arguments on 27/09/2022.
3. Appellant stated that, he had sought from the PIO of the office of Mamlatdar of Bardez, information pertaining to Sidheshwar Devasthan situated at Chapora-Anjuna, Bardez. Mamlatdar, being the Administrator of the said Devasthan must have the said

information available in his records and is required to furnish the same, since the information is in public domain. However, the PIO has provided incomplete information. Appellant further contented that, the PIO and the public authority are trying to mislead the Commission and under the guise of providing the information, has furnished incomplete information, hence he has been trying to escape from discharging duties enshrined under the Act.

4. PIO stated that, pertaining to the information sought by the appellant complete information was not available in his records, so vide reply dated 25/08/2021 he furnished available information and forwarded the application to the Sidheshwar Devasthan to which, vide reply dated 23/05/2022 the President of Devasthan stated that they are not liable to provide any information since the Devasthan is not the public authority under Section 2 (h) of the Act. PIO further stated that, he has taken all the efforts to furnish information available with him and has acted in accordance with the Act.
5. Appellant, while arguing his matter contented that, the PIO is trying to mislead the Commission by citing the reason that, the reply has been filed by President of Shri. Sidheshwar Devasthan stating that they are not the public authority. Similarly, PIO has relied on order passed by this Commission in Appeal No. 135/2016/SCIC, which states that Shri.Dev Bodgehwar and its Managing Committee are not the public authority. However, in that matter the applicant had sought information from Shri.Dev Bodgehwar, and in the present matter appellant had requested PIO of office of Mamlatdar of Bardez to furnish the information. Mamlatdar of Bardez, being the Administrator of Devalayas in Bardez Taluka, is required to maintain the said information, hence the PIO of the office of the Mamlatdar of Bardez is mandated to furnish complete information.
6. Upon perusal of the available records it is seen that, the appellant vide his application had sought from the office of the Mamlatdar of Bardez certain information pertaining to Sidheshwar Devasthan-Chapora, Bardez. As per Article 70 of Devasthan Regulation as approved by Diploma Legislative No. 645 dated 30/03/1933 and amended by Diploma Legislative No. 1989 dated 29/05/1959, the Mamlatdar, being the Administrator of Talukas (Concelho) is designated as Administrator of the bodies of members (mazanias), i.e. Managing Committee. The Mamlatdar is bestowed upon functions such as to watch over the execution of regulations and bye-laws, to maintain the order of regularity of the bodies (mazanias), to audit the accounts of bodies, to examine the documents and book-keeping, to transit Government decisions to the

Committee etc. Meaning, Article 70 of Devasthan Regulation gives supervisory powers to the Administrator / Mamlatdar of Devasthan.

7. It becomes clear from the description in para 6 that the Administrator / Mamlatdar acts as a supervisory head of Devasthans in his Taluka. Therefore, he should be in possession of records of Devasthans pertaining to budget, audit, deposits in the form of cash and other valuables like gold and silver, minutes of the meetings of Managing Committee of Devasthan (mazanias), etc. Appellant, in the present matter had requested for similar information and as mentioned above, the said information has to be available in the records of the Administrator / Mamlatdar of the concerned taluka.
8. PIO has stated that the entire information sought by the appellant was not available in his records i.e. office of the Administrator /Mamlatdar, hence, he furnished part information which was available and requested the Managing Committee of Sidheshwar Devasthan to provide the remaining information. President of the Managing Committee refused to disclose information stating they are not the public authority under Section 2 (h) of the Act and information disclosure under the Act is not binding on the Devasthan Committee. The Commission endorses the stand taken by the President of Managing Committee of Sidheshwar Devasthan and holds that the Devasthan, not being the public authority under the Act, is not liable to furnish any information under the Act.
9. The Commission although endorses the stand taken by the President of Managing Committee, finds in records, no correspondence done by the PIO with reference to application dated 05/07/2021. PIO in some earlier matters, filed by the same appellant had requested the said Devasthan to furnish the information and Devasthan had refused to disclose the information. No request was made by the PIO to Shri. Sidheshwar Devasthan-Chapora, pertaining to the application dated 05/07/2021, and no reply from Devasthan was received by the PIO in the instant matter. Hence, reply filed by the PIO is misleading and not supported by any relevant action. The Commission in this matter takes serious note of irresponsible and casual approach of the present PIO.
10. Appellant is right in stating that the office of the Mamlatdar, being the Administrator of the Devasthan in his Taluka is required to maintain and preserve all relevant details with documents pertaining to the affairs of Devasthan, in the records of his office. However, PIO has consistently stated that the complete information pertaining to Sidheshwar Devasthan, as sought by the appellant, is not

available in the records of the office of the Mamlatdar, hence he requested Devasthan Committee to provide the information, and the Committee refused to divulge the information. Here, the Commission notes that the Act requires the office of the Mamlatdar to maintain and preserve the relevant information pertaining to the affairs of Devasthan, in safe custody, yet according to the PIO, the information is not available in his office. However, while making this contention, PIO has not supported the same with any documents or action. The Act mandates PIO of Office of the Mamlatdar to maintain and preserve the records pertaining to Devasthans in his taluka. Hence, the Commission holds that the said records were available in his office at one time and he has failed to produce the same without substantiating his contention.

11. 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”.*

12. 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”.*

13. Subscribing to the ratio laid down in the above mentioned judgment and in the background of the facts of this case, the Commission concludes that it was the responsibility of the PIO to furnish the information sought by the appellant since he is required to maintain and preserve the same in his records. PIO in the instant matter has failed to comply with Section 7 (1) of the Act and the said contravention makes the PIO liable for penal action under Section 20 (1) and 20 (2) of the Act. Similarly, the PIO is required to carry out search of his records in order to furnish the information and in case unable to trace the information, the said lapse needs to be enquired.

14. The Commission notes with all seriousness that the first appeal filed under Section 19 (1) of the Act by the appellant before the FAA was not heard at all. Section 19 (6) mandates FAA to dispose the appeal within maximum of 45 days from the date of filing thereon. Non hearing of the appeal is considered as de-reliction of duty and such an inaction from senior officer of the rank of Mamlatdar compels appellant to approach the Commission, for which appellant has to incur unnecessary expenditure. FAA is required to abide by the law and dispose the appeals as provided under Section 19 (6) of the Act.

15. In the light of above discussion, the present appeal is disposed with the following order:-

- a) Present PIO is directed to trace and furnish the information sought by the appellant vide application dated 05/07/2021, within 15 days from the receipt of this order, free of cost.
- b) In case the said information is not found within 15 days, then the FAA, Mamlatdar of Bardez is directed to undertake appropriate enquiry into the issue of information pertaining to the affairs of Sidheshwar Devasthan, Chapora –Bardez, being not available in the records. The Mamlatdar shall complete the enquiry and submit the findings to the Commission within six months from the receipt of this order.
- c) Issue show cause notice to Smt. Yogita Velip, the then PIO and Shri. Rupesh Kerkar, the present PIO, Awal Karkun, Office of Mamlatdar of Bardez, Mapusa-Goa and the PIOs are further directed to show cause as to why penalty as provided under Section 20 (1) and /or 20 (2) of the Act, should not be imposed against him/ her.
- d) In case the PIO is transferred, the present PIO shall serve this notice alongwith the order to the then PIO and produce the acknowledgment before the Commission on or before the next date of hearing, alongwith the present address of the then PIO.
- e) Smt. Yogita Velip, the then PIO and Shri. Rupesh Kerkar, the present PIO are hereby directed to remain present before the Commission on **30/01/2023 at 10.30** a.m. alongwith the reply to the showcause notice.
- f) The Registry is directed to initiate penalty proceeding against Respondent No. 1, the then PIO and the present PIO.

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

