

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 154/2022/SIC

Mr. John Francis D'Silva,
R/o. H.No. 131,
Gogol Housing Board,
Margao-Goa 403601.

-----Appellant

v/s

1. The Public Information Officer,
Mamlatdar of Salcete, Mathany Saldanha Complex, SDO,
Fatorda-Goa.

2. The First Appellate Authority,
Dy. Collector & Sub Divisional Officer,
Margao-Goa.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 22/12/2021
PIO replied on	: Nil
First appeal filed on	: 21/01/2022
First Appellate Authority order passed on	: 27/04/2022
Second appeal received on	: 06/06/2022
Decided on	: 07/11/2022

ORDER

1. The appellant vide application dated 22/12/2021, filed under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') had sought certain information from Respondent No. 1, Public Information Officer (PIO). Aggrieved by non furnishing of the information he filed appeal before the Respondent No. 2, First Appellate Authority (FAA). FAA directed the PIO to file FIR in the case of missing file and submit compliance within seven days. PIO did not comply with the said order, hence the appellant approached the Commission by way of second appeal.
2. Notice was issued to the concerned parties, pursuant to which Advocate Farnaz Sha appeared on behalf of the appellant, pressing for the information and penal action against PIO. Advocate Farnaz Sha filed written arguments on 13/09/2022. Smt. Sharmila Sinai Kerkar , APIO and Shri. Vishwas Satardekar, U.D.C appeared on behalf of PIO and filed reply on 08/08/2022. FAA was represented by his authorised representative , filed reply dated 05/07/2022.
3. Appellant stated that, he had sought information pertaining to the declaration of Mundkar Order No. JM-1/Mund/Reg/Ben/629/78 dated

27th August 1991, pertinent to Mundkarial house bearing No. 510/A. PIO has failed to furnish the said information and later, failed to comply with the order of the FAA. The requested information has to be available in the records of the PIO and he has to furnish the same.

4. PIO submitted that, it was informed by the Joint Mamlatdar- I Salcete, Margao that as per the office records the file requested by the appellant is not available in the Court of Joint Mamlatdar- I of Salcete as per the inventory list, hence the application of the appellant may be withdrawn.
5. FAA vide his reply stated that, during the hearing of the first appeal PIO submitted that the file requested by the appellant cannot be traced in the office records. That the FAA passed an order directing the PIO to file FIR on the missing file and submit compliance within 07 days. However, compliance report is not sent to his office by the PIO.
6. Advocate Farnaz Sha while arguing on behalf of the appellant stated that the public authority/ PIO cannot take excuse of missing file for denying the information, as such a claim has no legality under the Act. Further, if file is really lost, there is a clear-cut procedure that the officer designated as Records Officer has to follow, search for the file, reconstruct the file, if it cannot be found, register FIR against the person responsible for loss or misplacement. However, none of the steps are followed by the PIO who is the record keeper of the concerned office, inspite of the direction by the appellate authority. Therefore, appellant presses for appropriate action against the PIO.
7. After careful perusal of the records of the instant case, the Commission notes that the information sought by the appellant pertains to a Mundkar Order, hence the said information has to be available in the records of the authority and PIO being the custodian of the records of his office under Section 7 (1) of the Act, is mandated to furnish the said information to the appellant. However, it is seen from the records that the PIO did not provide the information, what is more surprising is that the PIO did not even bother to send a reply to appellant's application.
8. Section 7 (2) of the Act states that if the PIO fails to give decision on the request for information within the stipulated period then the inaction of the PIO is considered as deemed refusal of the request. In such a matter, under Section 19 (5) of the Act the onus was on PIO

to prove that the denial was justified. The PIO failed to justify the denial before the FAA as well as before the Commission.

9. Reply filed by the PIO does not state anything regarding the reasons for denying the information or the reasons for non-availability of the concerned file. More so, during the hearing on 08/08/2022 the PIO was directed to file an affidavit stating the reasons for non-availability of the said file. It is observed that the PIO or his representative neither filed the affidavit, nor appeared before the Commission for subsequent hearing.
10. It is also seen that the PIO has failed to comply with the order of the FAA. FAA vide order dated 27/04/2022 had directed the PIO to file FIR on the missing file and submit compliance report, however, PIO did not take appropriate action on the said order. Non compliance of the direction of superior officer/ appellate authority amount to dereliction of duty.
11. Non furnishing of the information has caused mental agony and hardship to the appellant, as the appellant had to approach the FAA and later the Commission. PIO with his adamant behavior has disrespected the provisions of the Act and also the authorities designated under the Act. Such a deplorable conduct of the PIO is not acceptable to the Commission. Contravention of Section 7 (1) of the Act attracts penal action under Section 20 (1) and 20 (2) of the Act and the Commission comes to a conclusion that the PIO with the conduct as described above, deserves to be penalised under the provision of the Act.
12. It can be ascertained from the reply of the PIO that the information sought by the appellant existed in PIO's records at some point of time and the same is not available as on now. Similarly, it is seen that the FAA had directed the PIO to file FIR on the missing file, meaning the FAA also held that the concerned file was available in PIO's records and the same is missing now. Hence, it is clear that the PIO was required to either furnish the information, or file FIR or an affidavit as directed by the Commission. PIO failed to take any action on either of the above mentioned point.
13. 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 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".

14. Para 8 of the Judgment (supra) 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”.

15. 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 the PIO is guilty of not furnishing the information , not complying the direction of the FAA and the Commission. However, the Commission thinks it appropriate to seek explanation from the PIO before imposing penal action under Section 20 of the Act, against him.
16. In the light of above discussion, the present appeal disposed with the following order:-
 - a) PIO is directed to undertake thorough search of the concerned records and furnish the information, if found in records, sought by the appellant vide application dated 22/12/2021, within 20 days from the receipt of this order, free of cost.
 - b) PIO is directed to file FIR if the said file is not found in the records, within 30 days from the receipt of this order.
 - c) The FAA is directed to monitor the enquiry of the FIR filed by the PIO, as directed in Para 16 (b) above.
 - d) Issue notice to the PIO and PIO is further directed to showcause as to why penalty as provided under Section 20 (1) and /or 20 (2) of the Act should not be imposed against him.
 - e) In case the then 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 full name and present address of the then PIO.
 - f) The then PIO is hereby directed to remain present before this Commission on 22/12/2022 at 10.30 a.m. alongwith the reply to the showcause notice.
 - g) The Registry is directed to initiate penalty proceeding against the 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