

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 192/2021/SIC

Nazareth Baretto,
R/o. H.No. 126, Borda,
Margao, Salcete-Goa 403602.

-----Appellant

v/s

The Public Information Officer,
Village Panchayat of Rumdamol-Davorlim,
PO Navelim,
Salcete-Goa 403602.

-----Respondent

Relevant dates emerging from appeal:

RTI application filed on	: 04/12/2020
PIO replied on	: 05/01/2021
First appeal filed on	: 27/01/2021
First Appellate authority order passed on	: 04/03/2021
Second appeal received on	: 19/08/2021
Decided on	: 07/11/2022

ORDER

1. The brief facts of this appeal are that the appellant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') had sought certain information from Respondent Public Information Officer (PIO). Aggrieved by the information furnished vide reply dated 05/01/2022, he filed appeal dated 27/01/2021 before the First Appellate Authority (FAA), Block Development Officer, Margao-Goa. FAA vide order dated 04/03/2021 disposed the appeal. Being aggrieved, appellant preferred second appeal before the Commission.
2. Notice was issued and the matter was taken up for hearing. Appellant appeared alongwith Advocate Neha Mayenkar, filed submission on 09/12/2021 and 13/06/2022. Ms. Priscilla Niasso, PIO appeared in person and later was represented by Advocate Ashutosh Vicente Da Silva, filed reply dated 13/07/2022. PIO filed additional reply on 01/08/2022 and affidavit in evidence on 27/09/2022, whereas,

appellant on 19/09/2022 filed written arguments and rejoinder to the additional reply of PIO.

3. Appellant stated that, the PIO has tried to evade the disclosure of the information on one pretext or the other, hence he has filed the second appeal in order to get the requested information. Appellant further stated that Smt. Priscilla Niasso was holding charge as the PIO on the date of application, hence she is responsible to furnish the information as a custodian of the records of Village Panchayat Rumdamol-Davorlim.
4. PIO stated that, the requested information was not found in the Panchayat records, accordingly the appellant was informed. In spite of being informed about non-availability of the information the appellant has filed this appeal. PIO further stated that, as per the direction of the FAA, thorough search was undertaken, inspection was provided to the appellant, yet the required documents were not found. PIO also stated that, she was not the PIO of the Village Panchayat on the day when the letter, which is the subject matter of the present appeal, was inwards in the Office of the Village Panchayat, hence she cannot be held responsible for missing of the said information.
5. Advocate Neha Mayenkar argued on behalf of the appellant stating that, she along with the appellant visited PIO's office on 13/05/2022 for inspection of the concerned files. However, PIO was not present and irrelevant files were provided for inspection by the staff of PIO's office, hence appellant is not satisfied with the said inspection.
6. Advocate Ashutosh Vicente Da Silva while arguing on behalf of PIO stated that, the PIO has provided inspection of records on three occasions and even the appellant has not found the relevant documents. Also, detail search was carried out as per the direction of FAA, yet the relevant documents were not found. Therefore, PIO cannot be held guilty for non-availability of the information.

7. Upon perusal of the records it is seen that the appellant vide application dated 04/12/2020 had sought information pertaining to proceeding sheet and remark registered by the authority on a letter dated 13/07/2010, submitted by him. The said information has to be available in the office of the PIO since the said letter dated 13/07/2010 was submitted in the office of the Administrator of Comunidades of South Goa and the Administrator of Comunidades had forwarded the same to the Village Panchayat Rumdamol –Davorlim, as contended by the appellant. The PIO has not denied the said contention, however, has stated that the records pertaining to the said letter are not found in the office of the Village Panchayat.
8. Appellant and PIO have made rival contentions regarding availability of the information sought. Hence, both parties were asked to undertake inspection of the records. However, after three round of inspection appellant maintained that PIO provided irrelevant files for inspection, whereas, PIO stated that, no information was found after thorough search and detail inspection.
9. In order to arrive at conclusion, the Commission under Rule 5 (i) of the Goa State Information Commission (Appeal Procedure) Rules, 2006 directed the PIO to file an affidavit regarding the status of the information. Accordingly PIO vide an affidavit filed before the Commission on 27/09/2022 stated that, the information sought by the appellant is not found in the Panchayat records and vide letter dated 08/07/2022 she has requested the Administrator of Comunidades, South Zone, to issue a certified copy of the said letter, referred by the appellant, so as to furnish the same to the appellant. PIO further stated in the affidavit that, since the time she took charge of the Panchayat of Rumdamol-Davorlim the said letter dated 13/07/2010 under inward no. 283 was not seen by her, therefore the said information is not available in her records.

10. With reference to the above mentioned affidavit filed by the PIO, the Commission concludes that the information sought by the appellant is not available in the records of the PIO. Since the information is not available in records, the Commission cannot issue direction to the PIO to furnish a non existing information or to create any such information. Needless, to say that in case at any time, the statements in the said affidavit are found false, the person swearing the same would be liable for action for perjury.

11. In the light of above discussions the Commission holds that since the information sought by the appellant vide application dated 04/12/2020 does not exist, the same cannot be ordered to be furnished. The appeal is thus disposed accordingly and the 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

