

GOA STATE INFORMATION COMMISSION

"Kamat Towers" 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437208, 2437908 E-mail: spio-gsic.goa@nic.in Website: www.gsic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 266/2021/SIC

Shri Oswald Fernandes,
R/o. H. No. 1141, Muxivaddo,
Curtorim, Salcete -Goa

..... Appellant

v/s

1. The Public Information Officer (PIO),
Mr. Allaiddin Maniyar,
Village Panchayat of Cavelossim,
Cavelossim, Salcete-Goa 403731
2. The First Appellate Authority (FAA),
Mr. Amitesh Shirvoikar,
Block Development Officer-I,
Office of the BDO, Margao-Goa

..... Respondents

Filed on: 27/10/2021
Decided on: 27/05/2022

Relevant dates emerging from appeal:

RTI application filed on	: 19/08/2021
PIO replied on	: 06/10/2021
First appeal filed on	: 20/09/2021
FAA order passed on	: 05/10/2021
Second appeal received on	: 27/10/2021

ORDER

1. Aggrieved by the order of Respondent No. 2 First Appellate Authority (FAA) and non furnishing of the information by Respondent No. 1 Public Information Officer (PIO), appellant preferred second appeal under section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act').
2. The brief facts of this appeal are that the appellant vide application dated 19/08/2021 had sought information on 7 points from the PIO. Appellant received no reply within the stipulated period, hence filed appeal dated 20/09/2021 before the FAA. FAA vide order dated 05/10/2021 disposed the appeal with direction to the PIO to furnish the information to the appellant. However PIO furnished part information, being

aggrieved, appellant preferred second appeal before the Commission.

3. Notice was issued, pursuant to which appellant appeared, filed a submission dated 01/04/2022 and argued his case on the same day. Shri. Amitesh A. Shirvoikar, FAA appeared and filed a submission on 01/12/2021. Subsequently FAA was represented by Shri. Pradeep Tamhankar under letter of authority. Shri. Allauddin Maniyar, PIO appeared alongwith Advocate J. Fernandes and Advocate A. Andrade, filed reply dated 19/01/2022 and additional reply dated 08/03/2022. Advocate J. Fernandes argued on 21/04/2022 on behalf of the PIO.
4. Appellant stated that, PIO has furnished only part information and some documents are not provided by him. PIO, being the Secretary of the Village Panchayat, is the custodian of documents in his office, however in connivance with the person who was involved in theft of those missing documents, PIO has allowed some persons to interfere with the documents and proceeding book of the Village Panchayat. Hence he should be held responsible for the missing documents from his office. Moreover, PIO has allowed some person to write the resolution in the proceeding book, the said action is illegal and PIO needs to be punished for the said offence.

Appellant further stated during the arguments that the said PIO is often involved in illegal activities in connivance with some violators of law and in this regard show cause notice dated 14/01/2022 has been issued to him by the Director of Panchayat. With this, appellant contended that the PIO is involved in allotting house number to one illegal structure, of which information is sought vide RTI application and therefore PIO is evading the disclosure of the said information under the garb that the documents are missing from Panchayat Office.

5. PIO stated that he has furnished the available information and remaining information, which is not available in his office cannot be provided. Similarly, he cannot be held responsible for missing of old records since these records have been maintained and accessed by various secretaries and Panchayat members over the period. PIO further stated that he has not connived with anybody with respect to missing of certain documents, on the contrary he has filed a missing complaint dated 06/08/2020 with

the Police and sent two reminders regarding the status of the enquiry.

6. FAA stated vide his submission that he heard the appeal and passed the order directing the PIO to furnish the required information. The appeal was disposed by him within the mandatory period, as provided by the law.
7. The Commission after perusal of the records of the present matter has arrived at following findings:-
 - a) Appellant had requested for information on 7 points, out of which information on point No. 3, 4 and 5 has been furnished and for point no. 1, 2, 6 and 7 PIO has stated that the information is not available in Panchayat records. However PIO had not replied to the appellant, within the stipulated period, the above mentioned information was furnished only after the order was issued by the FAA.
 - b) Appellant is aggrieved with FAA since he felt that FAA should have asked the PIO to furnish the entire information before him during the proceeding. However, Commission observes that the order of FAA is clear and as per the direction, PIO was required to furnish the information to the appellant.
 - c) PIO has written a letter dated 06/08/2020 to Police Inspector, Colva Police Station to register a complaint/FIR. However the PIO has not updated the Commission regarding the progress of police investigation. In such a situation Commission cannot arrive at any conclusion with respect to the missing documents.
 - d) As mentioned in the above para, the Commission cannot issue direction to the PIO to furnish the remaining information, which according to PIO, is missing from the office and police are yet to complete the investigation.
 - e) However, being the Secretary of the Village Panchayat, the PIO is the custodian of all documents and records maintained by his office, and therefore should do regular follow up of his police complaint.

f) Regarding entry in different handwriting in the proceeding sheet of Village Panchayat, both sides have made claims and counter claims. However the issue does not fall within the jurisdiction of the Commission, hence the appellant is required to approach appropriate authority for redressing the said matter.

8. The Commission has noticed that this is the second instance with respect to Shri. Allauddin Maniyar, Secretary of Village Panchayat Cavelossim, wherein information requested by the appellant is missing from the records, and in both the matters, appellant has levelled charges of corruption against the PIO. Therefore, the Commission holds it appropriate to recommend the Director of Panchayats to undertake enquiry into the instances of missing of the records from the office of PIO in Village Panchayat Cavelossim.

9. 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”.

10. 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”.

11. Subscribing to the ratio laid down in the above mentioned judgement and in the background of the facts of this case, the Commission concludes that since the remaining information is not traceable as of now and the FIR having being registered in the Police Station, the Commission is unable to direct the PIO to furnish the remaining information. However, that itself does not absolve PIO of his responsibility under the Act and the Act governing the Village Panchayats under which such documents are required to be maintained. And therefore, an appropriate order is required to be passed so that the liability is fixed and records are traced.
12. In the light of above discussion, the appeal is disposed with the following order:-
 - a) FAA, Block Development Officer (BDO) is directed to monitor the inquiry of the FIR/Police Complaint filed by the PIO on 06/08/2020 in Colva Police Station.
 - b) The Director of Panchayats is directed to undertake inquiry into the claim of records being missing from the office of PIO/Secretary Village Panchayat Cavlossim, and initiate appropriate proceedings against the Secretaries of the said Village Panchayat, responsible for missing of the said documents.
 - c) Registry is directed to send a copy of this order to the Director of Panchayats, Government of 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