

# GOA STATE INFORMATION COMMISSION

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

## Complaint No. 19/2021/SIC

Shri. Ramesh Kerkar,  
R/O., H. No. 3/15, Muddawado,  
Saligao, Bardez-Goa

..... Complainant

**v/s**

The Public Information Officer  
(PIO)/Secretary  
Village Panchayat of Saligao,  
Saligao, Bardez-Goa, 403511

.....Opponent

Filed on : 10/11/2021

Decided on : 29/04/2022

### **Relevant dates emerging from appeal:**

RTI application filed on	: 17/08/2021
PIO replied on	: 06/10/2021
First appeal filed on	: 28/09/2021
FAA order passed on	: 26/10/2021
Second appeal received on	: 10/11/2021

## **ORDER**

1. Aggrieved by non furnishing of the information by Opponent Public Information Officer (PIO), inspite of the direction from the First Appellate Authority (FAA), the complainant filed complaint under section 18 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'). The complaint came before the Commission on 10/11/2021.
2. The brief facts of the complaint are that the complainant vide application dated 17/08/2021 sought certain information from the the PIO. Since PIO did not reply within the stipulated period, complainant filed appeal dated 28/09/2021 before the First Appellate Authority (FAA). Subsequently vide letter dated 06/10/2021 PIO furnished part information and later vide order dated 26/10/2021, FAA directed PIO to furnish entire information. However PIO maintained that she is unable to furnish the remaining information since the concerned file is not traceable.

3. Pursuant to the notice of the Commission, PIO appeared and filed reply dated 18/01/2022. Complainant, who attended the proceeding regularly, filed submission dated 22/12/2021.
4. Complainant stated in his submission that PIO is trying to evade disclosure of the information. He received part information after 49 days, before which he had already filed first appeal. PIO's contention that the concerned file is not traceable was not accepted by the FAA and she was directed to furnish complete information within 15 days. However PIO has not taken any action even after FAA's order. With this, complainant prayed for the information and penal action against the PIO.
5. PIO stated that she furnished reply to the complainant on 06/10/2021 alongwith the available information and also informed him that the concerned file is not traceable. Further, PIO sought time of one month in order to enable her to trace the file and furnish the information.
6. Upon careful perusal of the records it is seen that the complainant had sought information on 8 points and the PIO furnished information only on point No. 2 and 7, that too after the stipulated period, during the proceeding of the first appeal. PIO contends that she is unable to furnish the remaining information since the concerned file is not traceable. Further, PIO vide reply dated 18/01/2022 requested the Commission to grant one month time to trace the file and furnish the information. However, she has not taken any action during this one month in that direction. Hence the Commission accepts contention of the complainant that the PIO is acting arbitrarily.
7. Secondly, PIO has not mentioned anything on records as to what efforts she has taken to trace the file. On the contrary she has remained silent even after giving undertaking to the Commission of tracing the file and furnishing the information to the Complainant.
8. Thirdly, PIO was directed on 18/01/2022 to file an affidavit stating that the file is not traceable. However she has not complied with the said direction of the Commission. Strangely, she has also stopped attending the proceeding.
9. All records are required to be stored in the safe custody of the PIO, who is the Secretary of the Village Panchayat. Being a responsible officer, the PIO is expected to take necessary remedial action if any

records are found missing. Here in this matter, PIO is claiming that the concerned file is not traceable, however has not taken any further action to trace the file. If the file is really not traceable then the PIO is required to file a police complaint and inform the higher authorities, which she has not done. Thus the Commission does not believe in the contention of the PIO.

10. 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".*

11. 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".*

12. Considering the ratio laid down by the Hon'ble High Court of Delhi, and after perusal of the facts of the present case, the Commission concludes that the PIO cannot be absolved of her responsibility under the Act when the Goa Panchayat Raj Act, 1994 governing the Village Panchayat, requires the said documents to be maintained. The PIO has also not brought on record any document to show that the said records were legally destroyed. The PIO is guilty of not furnishing the complete information, and not complying the order of the FAA and not adhering to the directions of the Commission. The

Commission cannot endorse such a deplorable and irresponsible conduct of the PIO and therefore hold that the PIO is liable for penal action under section 20 of the Act.

13. In the light of above discussion, the complaint is disposed with the following order:

- (a) The PIO is directed to trace the concerned file and if not traceable, file a police complaint in the local police station. The process should be completed within a period of one month.
- (b) The Director, Directorate of Panchayats is directed to ensure that the proper enquiry is conducted into the claim of records of Village Panchayat Saligao being not traceable and necessary corrective measures are initiated.
- (c) Issue show cause notice to the PIO Smt. Pravisha Bhonsle, and the PIO is 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 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 acknowledgement before the Commission on or before the next date of hearing , along with the full name and present address of the then PIO.
- (e) Smt. Pravisha Bhonsle, PIO is hereby directed to remain present before this Commission on 03/06/2022 at 10.30 a.m. alongwith the reply to the show cause notice.
- (f) The Registry is directed to initiate penalty proceeding and send a copy of this order to the Director, Directorate 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