

GOA STATE INFORMATION COMMISSION

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

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in

Website: www.scic.goa.gov.in

CORAM: Shri Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 38/2021/SIC

Shri Shivanand G. Amonkar,
R/o. H. No. 11/12, Virangati,
Khorlim Kasar-Wada,
Mapusa-Goa, 403507

.....Appellant

v/s

1. The Public Information Officer (PIO),
Mapusa Municipal Council,
Mapusa-Goa, 403507

2. The First Appellate Authority (FAA),
The Chief Officer,
Mapusa Municipal Council,
Mapusa-Goa, 403507

.....Respondent

Filed on: 16/02/2021
Decided on: 06/05/2022

Relevant dates emerging from appeal:

RTI application filed on	: 14/07/2020
PIO replied on	: 16/09/2020
First appeal filed on	: 22/09/2020
First Appellate authority order passed on	: Nil
Second appeal received on	: 16/02/2021

ORDER

1. The brief facts of this appeal are that the appellant vide application dated 14/07/2020 sought certain information from Respondent No.1 Public Information Officer (PIO). Appellant received reply from PIO after 60 days informing him that the information is not available. Being aggrieved, he filed appeal dated 22/09/2020, however Respondent No. 2 First Appellate Authority (FAA) failed to decide the same. Hence under section 19 (3) of the Right to Information Act, 2005 (for short, Act) appellant approached the Commission by way of second appeal.
2. Pursuant to the notice issued by the Commission, Adv. C. F. de Sousa appeared on behalf of the appellant and Shri. Vinay

Agarwadekar, APIO remained present on behalf of PIO. Later Shri. Vyankatesh Sawant appeared in person and filed affidavit dated 14/10/2021. Appellant filed submission dated 12/08/2021, reply on affidavit dated 22/11/2021 and written submission on 04/01/2022.

3. PIO stated in his affidavit that, he had intimated the appellant that the information requested by him is not available since the records are more than 20 years old. Hence the information cannot be furnished in view of section 8(3) of the Act which provides for exemption from disclosure of documents which are more than 20 years old. PIO further stated in the said affidavit that upon receiving the application for information he had issued notice to Shri. Vinay Agarwadekar, APIO and Shri. Ramesh Kinekar, U.D.C. to search and provide the relevant information. Shri Kinekar submitted that he searched old records and the concerned file is not found in the office records. Therefore, the information requested cannot be furnished to the appellant.
4. Appellant stated that section 8(3) of the Act does not act as an absolute bar from disclosure of document which are more than 20 years old and that the PIO has misinterpreted the said provision. The information sought does not come under any exemption clause and the PIO is required to provide an explanation stating therein why the said documents are not available.
5. Adv. C.F. de Souza, while arguing on behalf of the appellant stated that he is seeking information pertaining to approval order dated 12/05/1988 passed by the Chief Officer and the President in respect of transfer of lease pertaining to shop no. 95 in the name of 'M/s Vishwanath Gunaji Amonkar' from the name of ' Vishwanath Gunaji Amonkar'. The said order is reflected on the demand register maintained by the PIO's office . Appellant requires the said information for legal purpose, though more than 20 year old, as claimed by the PIO, the said information is neither exempted under section 8, nor rejected under section 9 of the Act .
6. Adv. C. F. de Sousa further argued that PIO's claim that the said information is not available cannot be accepted because he has not indicated the date of destruction / weeding out of the said

record. Neither has he produced any rules or regulations of the Mapusa Municipal Council nor copy of any order of the competent authority authorizing the destruction / weeding out of the said records. In the absence of these document, the PIO is duly bound to furnish the said information.

7. Upon perusal of the records, it is seen that the PIO after 60 days from the date of application intimated appellant that the information is not available since the records are more than 20 years old, and denied the information under section 8(3) of the Act.

8. Section 8 (3) of the Act reads as:-

8. Exemption from disclosure of information – (3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

9. It is seen from the above para that section 8(3) of the Act does not provide blanket exemption to any information which is more than 20 years old. On the contrary the said provision mentions that information relating to any occurrence, or matter 20 years ago, shall be provided to the applicant. It means, the record, if available, must be provided, or if the relevant records are weeded out, the PIO is required to give details of the record retention policy under which such weeding / destruction has been undertaken. Similarly, if the records are not found / traceable then the PIO must state the efforts taken by him to search the same and measures taken by him after noticing that the records are not available. In the present matter the PIO has not taken any such steps and rather, has misinterpreted section 8 (3) to his convenience.

10. The Hon'ble Supreme court in Central Board of secondary Education & Anr. V/s Aditya Bandopadhyaya & Ors. (Civil Appeal No. 6454 of 2011, arising out of SLP (c) No.7526/2009) has held in para 30:-

“30. On behalf of the respondents/examinees, it was contended that having regard to sub-section (3) of [section 8](#) of RTI Act, there is an implied duty on the part of every public authority to maintain the information for a minimum period of twenty years and make it available whenever an application was made in that behalf. This contention is based on a complete misreading and misunderstanding of [section 8\(3\)](#). The said sub-section nowhere provides that records or information have to be maintained for a period of twenty years. The period for which any particular records or information has to be maintained would depend upon the relevant statutory rule or regulation of the public authority relating to the preservation of records. [Section 8\(3\)](#) provides that information relating to any occurrence, event or matters which has taken place and occurred or happened twenty years before the date on which any request is made under [section 6](#), shall be provided to any person making a request. This means that where any information required to be maintained and preserved for a period beyond twenty years under the rules of the public authority, is exempted from disclosure under any of the provisions of [section 8\(1\)](#) of RTI Act, then, notwithstanding such exemption, access to such information shall have to be provided by disclosure thereof, after a period of twenty years except where they relate to information falling under clauses (a), (c) and (i) of [section 8\(1\)](#). In other words, [section 8\(3\)](#) provides that any protection against disclosure that may be available, under clauses (b), (d) to (h) and (j) of [section 8\(1\)](#) will cease to be available after twenty years in regard to records which are required to be preserved for more than twenty years. Where any record or information is required to be destroyed under the rules and regulations of a public authority prior to twenty years, [section 8\(3\)](#) will not prevent destruction in accordance with the Rules. [Section 8\(3\)](#) of RTI Act is not therefore a provision requiring all ‘information’ to be preserved and maintained for twenty years or more, nor does it override any rules or regulations governing the period for which the record, document or information is required to be preserved by any public authority.

11. From the above mentioned ratio, it is clear that the provision of section 8(3) cannot be unilaterally applied in cases where the information is 20 years old. As far as the application dated 14/07/2020 is concerned, The appellant is seeking approval order passed by the Chief Officer and President and the said information, though more than 20 years old, PIO has not brought on record weeding out procedure of records, if any. Hence the Commission is of the considered opinion that the said information must be available in the records of the PIO and the same needs to be furnished to the appellant.
12. It is also noted that the PIO has filed an affidavit stating Shri. Kinekar, U.D.C. searched old records and made a submission to him that the said information is not available . PIO further states that this affidavit is sworn based on the submission made by the dealing hand Shri. Kinekar, however he does not state reasons for the non availability of information. The Affidavit also neither mentions anything regarding weeding out procedure of records, nor states what steps are initiated by him to search the records. Hence the contention of the PIO cannot be accepted. PIO is reminded of the fact that in case at any time the statement in the said affidavit is found false, the person swearing it would be liable for action for perjury.
13. On the background of these facts, the Commission concludes that the information sought by the appellant must be available in the records of the PIO since he has failed to establish that the relevant documents are not available in his office. Hence the PIO is required to go through the records once again and furnish the information to the appellant.
14. In the light of above discussion, the appeal is disposed with direction to the PIO to furnish the information sought by the appellant vide application dated 14/07/2020, within 30 days from the receipt of this order, free of cost.

Proceeding stand 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