

GOA STATE INFORMATION COMMISSION

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Appeal No. 323/2022/SCIC

Mr. Dinesh D'Souza,
H.No. 227, Borla,
Macasana, Salcete-Goa 403709.

.....Appellant

V/S

1. The Deputy Collector & SDO (P.I.O),
Mathany Saldhana Administrative Complex,
Margao, Salcete-Goa 403601.

2. The Additional Collector-I (F.A.A),
Mathany Saldhana Administrative Complex,
Margao, Salcete-Goa 403601.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 29/12/2022

Decided on: 08/11/2023

ORDER

1. The Appellant Mr. Dinesh D'Souza r/o. H.No. 277, Borla, Macasana, Salcete-Goa vide his application dated 29/06/2022 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Office of Deputy Collector & SDO, Margao, Salcete-Goa.
2. The said application was responded by the PIO on 29/07/2022 in the following manner:-

"With reference to your application dated 29/06/2022, this is to inform you that the information sought by you is pertaining to the jurisdiction of Dy. Collector/SDO-II, Salcete and therefore, assistance of SDO-II, Salcete was sought under Section 5(4) of the RTI Act, 2005 and requested him to furnish information.

Whereas, the Dy. Collector/SDO-II, Salcete has reported vide letter No. SDO/SAL/TA/2021-22/1029 & SDO-II/SAL/RTI/2022/1029 dated 27/07/2022 that the

information sought with regards to point no. 4 is not available in the records of their office.

However, information sought with regards to point no. 1 to point no. 3 is available in the office records of Dy. Collector/SDO-II, Salcete and thus you are requested to visit the office of the Dy. Collector/SDO-II, Salcete on any working day (Except Monday & Tuesday) during morning session upto 12:30 pm for making payment of Rs. 29/- against the copies sought at point no.1- to point no. 3 & then collect the information once it is ready."

3. Since the PIO failed and neglected to provide complete information as sought by the Appellant, he preferred first appeal before the Additional Collector-I, South Goa District at Margao-Goa on 28/09/2022, being the First Appellate Authority (FAA).
4. The FAA vide its order dated 10/10/2022 allowed the first appeal and directed the PIO to provide inspection of relevant files and also directed to provide the certified copy of the judgement dated 10/01/2003 to the Appellant, if the copy of the same is available in official records, free of cost.
5. Since the PIO failed and neglected to comply with the order of the FAA and provide the information, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act, with various prayers such as to direct the PIO to furnish the information, to impose penalty, to initiate disciplinary action against the PIO and also to issue direction to file FIR for missing of the records.
6. Notices were issued to the parties, pursuant to which Adv. Pravin Naik appeared on behalf of the Appellant, the representative of the PIO, Shri. Abhishek Naik appeared and placed on record the reply

of the PIO on 06/02/2023, the FAA duly served opted not to appear in the matter.

7. It is an admitted fact that, the Appellant has collected the information at point No. 1,2 and 3 by paying requisite fee. Therefore, the main controversy remains with regards to the information at point No. 4 of the RTI application which reads as under:-

"4. Copy of the judgement dated 10/01/2003 passed by your court pertaining to the Demarcation Case No. LRC/DEM/13/99 with respect to survey No. 6/3 of Macasana Village of Salcete Taluka."

8. It is the case of the Appellant that, the Deputy Collector & SDO, Margao Salcete-Goa has passed the judgement on 10/01/2003 in Demarcation Case No. LRC/DEM/13/99 and by filing the RTI application he sought copy of the said order. However, the PIO denied disclosing the said information with the reasoning "not available in office records". According to the Appellant, this reasoning is unfounded and not tenable in the eyes of law.
9. On the other hand, the PIO through his reply dated 06/02/2023 contended that, upon the receipt of the RTI application, he realised that the information pertains to the jurisdiction of the Dy. Collector & SDO-II therefore, the assistance of Dy. Collector & SDO-II was sought under Section 5(4) of the Act. Upon receipt of the reply of the Dy. Collector & SDO-II all the available information has been provided to the Appellant.

Further according to the PIO, the Dy. Collector and SDO-II vide letter dated 20/07/2022 informed him that information at point No. 4 could not be traced despite verifying the old records

including inventory file, accordingly said facts has been communicated to the Appellant on 29/07/2023.

Further, according to the PIO, the order of the FAA was forwarded to the Dy. Collector & SDO-II and inturn the said office reported back vide letter No. SDO/SAL/RTI/2021-22/1408 dated 11/10/2022 that thorough search was made to trace the file bearing No. LRC/DEM/13/99, however, the same could not be located in the office records and this fact has been informed to the Appellant by letter dated 12/10/2022.

10. During the course of hearing on 09/03/2023, the representative of the PIO, placed on record an Affidavit of the PIO dated 08/03/2023 duly executed before the Notary. I have perused the content of Affidavit, the tenor of the Affidavit is not found in consonance with the RTI Act. The Affidavit of the PIO therefore cannot be considered as an Affidavit with regards to non-availability of the records. Therefore, the Commission deemed fit and proper to direct the PIO to file an FIR for missing of the file.
11. In the course of hearing on 13/04/2023, the representative of the PIO placed on record additional reply of the PIO and submitted that, he has already informed the Dy. Collector and SDO-II to file an FIR regarding the missing of the file.
12. Having gone through the entire material on record, it is revealed that, the concerned file was lying within the jurisdiction of the Dy. Collector and SDO-II and considering the nature and gravity of the information, the Commission issued summons to the Dy. Collector and SDO-II for his comments.
13. Pursuant to the notice, the Dy. Collector and SDO-II, Shri. Ravishekar Nipanikar appeared and placed on record his comments and submitted that he has tried his level best to trace the information / file. However, the said information / file is not

traceable. The Commission therefore directed the Dy. Collector and SDO-II to file an FIR and produce on record the copy of FIR in the Court Proceeding and matter was fixed for clarification / order on 08/11/2023.

14. In the course of hearing today, none appeared for the Respondents. I have perused the content of the reply filed by the Dy. Collector and SDO-II, Shri. Ravishekar Nipanikar. He has admitted that demarcation case No. LRC/DEM/13/99 was filed and decided by the SDO and Dy. Collector-II on 10/01/2003. It is not the case of the public authority that purported information is not at all generated in the office of the public authority. Ordinarily the information which at some point of time 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 records. In the present case, it is found that the desired information though available in the records of the Dy. Collector and SDO-II, Margao-Goa at some point of time, cannot be traced despite best efforts and unfortunately no one takes the responsibility for the missing file.

Under the provision of RTI Act and also under the provisions of Public Records Act, 1993, the public authority is obliged to maintain the records.

15. In the present case, the reply filed by the Dy. Collector and SDO-II, Shri. Ravishekar Nipanikar on 23/08/2023, is flawed and not sustainable in the eyes of law. Under Section 19(5) of the Act, onus to prove the denial of information solely lies on the Information Officer who denied the request. However in this case the deemed PIO has miserably failed to justify his decision. Therefore missing of records should invite criminal complaint. He

also failed and neglected to comply with the direction of the Commission, it appears that he has not considered the issue seriously.

Considering the facts and circumstances, the appeal is partly allowed, the Dy. Collector and SDO-II, Shri. Ravishekar Nipanikar is directed to file an FIR for missing of the file bearing No. LRC/DEM/13/99 within **FIFTEEN DAYS** and submit a compliance report to the Commission within 30 days from the date of receipt of the order. With this direction the matter is disposed off.

- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner