

**GOA STATE INFORMATION COMMISSION**

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

**Appeal No. 138/2023/SIC**

Luel Fernandes,  
136, Cotta, Chandor,  
Salcete Goa 403714.

-----Appellant

**v/s**

The Public Information Officer/ Secretary,  
Village Panchayat Chandor- Cavorim,  
Post Chandor-Goa 403714.

-----Respondent

**Relevant dates emerging from appeal:**

RTI application filed on	: 07/12/2022
PIO replied on	: 02/01/2023
First appeal filed on	: 09/03/2023
First Appellate Authority order passed on	: 21/03/2023
Second appeal received on	: 13/04/2023
Decided on	: 10/07/2023

**ORDER**

1. The appellant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') had sought information on five points. Being aggrieved by the refusal of the complete information by the Public Information Officer (PIO) he filed appeal before the First Appellate Authority (FAA). The said appeal was allowed and the PIO was directed by the FAA to furnish information within 20 days. The said order was not complied by the PIO, thus the appellant approached the Commission by way of the present second appeal against the Respondent PIO, Secretary of Village Panchayat Chandor-Cavorim.
2. Notice was issued to both the parties and the matter was taken up for hearing. Appellant appeared in person and prayed for complete information as well as penal action against the PIO and filed submission dated 12/06/2023. PIO neither appeared nor was represented, however, a submission from Shri. Narayan Azgaonkar, the present PIO was received in the entry registry on 15/06/2023, and another submission on 06/07/2023.
3. Appellant stated that, the PIO in his reply with respect to point no. 1 though stated "*enclosed the certified copies*", however, annexure referred are not enclosed, which is a deliberate act to evade disclosure of the information. Further, PIO has refused to furnish

information on point no. 2 and 3 by stating that "*not found in the office records*". The said statement is not clear and the same was not accepted by the FAA.

4. Present PIO vide his submission stated that, information as available on point no. 1, 4 and 5 was furnished to the appellant by the then PIO vide reply dated 02/01/2023. Further, while searching the records annexures with respect to point no. 1 & information on point no. 2 and 3 were not found and the same was communicated to the appellant. That, the present PIO has neither acted irresponsibly nor failed to preserve the office records in the safe manner. Information on point no. 2 and 3 could not be furnished due to non availability of the requested annexures/ documents in the present premises where the office is functioning and the said information pertains to the year 1984.

PIO submitted that, the appellant so desires can be part of such team and accompany the officials in searching the records.

5. Upon perusal of the records of the instant matter it is seen that, the appellant, not satisfied with the information received from the PIO, had filed first appeal and the FAA had directed the PIO to furnish the information within 20 days. However, no further action was taken by the PIO in order to comply with the directions.
6. It appears from the records that the PIO had furnished information on point no. 1, 4 and 5 and with respect to information on point no. 2 and 3 had stated that the same is not found in the office records. Also, appellant is not satisfied with the reply on point no. 1, since the annexures were not furnished by the PIO. The fact that the annexures with respect to point no. 1 of the application and information on point no. 2 and 3 not found in records has been acknowledged by the present PIO and he is willing to undertake the search once again alongwith the help of the appellant. Thus, there is no malafide intention or any deliberate attempt to evade disclosure of information on the part of the present PIO.
7. However, it is a fact that the information with respect to point no. 1, 2 and 3 of the application existed at some point of time, meaning the same was required to be available in the records even now, yet the said information is not found. Whatever may be the reason, citizen should not be made to suffer due to the irresponsible conduct of the PIO, who is accountable for safeguarding the records of his office. Thus, in the considerate opinion of the Commission, appropriate

inquiry needs to be conducted to fix responsibility into missing of the information from the records of the PIO.

8. 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 his an 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".*

9. 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".*

10. Subscribing to the ratio laid down by the Hon'ble High Court as mentioned above and in the background of the facts of the present case, the Commission concludes that the missing information needs to be traced in order to furnish the same to the appellant. Though there is no evidence to hold present PIO responsible for missing of the information, that itself does not absolve PIO or former PIOs who worked as Secretaries of Village Panchayat Chandor-Cavorim, of their responsibility under the Act and the Act governing the Village Panchayats under which such documents are required to be maintained in safe custody. Therefore, an appropriate order is required to be passed so that the information is searched and furnished to the appellant or the liability is fixed in the case of missing of the documents.
11. In the light of above discussion, the appeal is disposed with the following order:-
- a) The present PIO is directed to undertake rigorous search of the relevant records and furnish the information on point no. 1, 2 and 3 sought by the appellant vide application dated 07/12/2022, within 15 days from the receipt of this order, free of cost.
  - b) The PIO shall give prior intimation of such search at least 48 hours in advance to the appellant and the appellant if desires, may join the search operation.
  - c) If such information is not found and furnished as directed in Para 11 (a) above, the Director of Panchayats shall undertake inquiry into the claim of records not found in the office of the PIO/ Secretary of Village Panchayat Chandor-Cavorim, and initiate appropriate proceedings against the Secretary of the said Village Panchayat found responsible for missing of the said document.
  - d) Above mentioned inquiry shall be completed and action taken report shall be furnished before the Commission within 120 days from receipt of this order.

e) The 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.