

**GOA STATE INFORMATION COMMISSION**

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

**Appeal No. 186/2023/SIC**

Sandeep D. Mote,  
R/o. H.No.32/1, Sukralwado,  
Torxem, Pernem Goa 403512.

-----Appellant

**v/s**

1. Administrator of Comunidade,  
Office of Administrator of Comunidade,  
North Goa, Mapusa-Goa 403507.

2. Additional Collector- III,  
Office of the Additional Collector- III,  
Mapusa-Goa 403507.

-----Respondents

**Relevant dates emerging from appeal:**

RTI application filed on	: 18/10/2022
PIO replied on	: 31/10/2022
First appeal filed on	: 01/11/2022
First Appellate Authority order passed on	: 10/02/2023
Second appeal received on	: 31/05/2023
Decided on	: 28/08/2023

**ORDER**

1. The appellant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') had sought inspection of the file bearing no. 1/114/2014/ACNZ year 2014 of Sirsaim village of Bardez Taluka. Being aggrieved by the reply of Respondent No. 1, Public Information Officer (PIO), appellant filed first appeal before Respondent No. 2, First Appellate Authority (FAA). The FAA directed the PIO to provide inspection to the appellant. It is the contention of the appellant that the PIO has deliberately not provided inspection to him, hence, he has appeared before the Commission by way of second appeal.
2. Notice was issued to the parties, pursuant to which Advocate Deepali Mote appeared on behalf of the appellant and argued for direction to PIO for compliance of the order of the FAA and penal action against the PIO. Shri. D. A. Kakatkar appeared for FAA, Additional Collector-III, Mapusa Goa. Shri. Ramesh A. Tulaskar appeared on behalf of the PIO, filed reply dated 25/07/2023. An affidavit was filed on 08/08/2023 on behalf of the PIO.

3. Advocate Deepali Mote appearing for the appellant stated that, she had requested for inspection of full file bearing no. 1/114/2014/ACNZ year 2014 of Sirsaim village. That, she had checked the said file in the office of the PIO in May 2022 during the tenure of earlier PIO. Later, she was surprised to receive reply to her application from Shri. Shivprasad S. Naik, present PIO and Administrator of Comunidades, North Zone, Mapusa stating that the said file is not available in the office, hence; she requests for direction to the PIO to search the file and provide inspection of the same.
4. Shri. Shivprasad S. Naik, PIO and Administrator of Comunidades, North Zone stated that, upon receipt of the application he had instructed his staff to get the information, but they could not find any records pertaining to the application dated 18/10/2022 and also his office has filed complaint to the Police Inspector at Mapusa Police Station, requesting the police to take further necessary action.
5. Upon perusal of the records of this matter it is seen that, the appellant had sought inspection of the file no. 1/114/2014/ACNZ year 2014 of Sirsaim village and is aggrieved by the stand of the PIO that the said file is not traceable.
6. PIO alongwith his reply filed before the Commission on 25/07/2023 has enclosed copy of letter dated 17/10/2022 addressed to the Police Inspector of Mapusa Police Station with a request to investigate into the matter of the said missing of file from his office. PIO has stated in the said letter that in the month of April/ May 2022 the said file was removed from Sirsaim Comunidade cupboard by the peon and was placed before the Administrator and the same was kept back to the cupboard on the same day, and that the said file is missing from his office from May 2022. Further, vide letter dated 19/10/2022 the PIO has communicated the correct file number to the Police Inspector of Mapusa Police Station.
7. Simultaneously, Smt. Deepali Mote, on behalf of the appellant has stated that she herself had inspected the said file in May 2022, the file was intact and safe in the custody of the then PIO. Later, when vide application dated 18/10/2022 she sought inspection of the same file, the present PIO informed her that the file is not available in his office.
8. Thus, both, the appellant as well as the PIO confirms that the file sought was available in the office of the PIO in May 2022 and the same was provided to the appellant then for inspection and was kept

back in the Sirsaim Comunidade cupboard, in the office of the PIO. Meaning, the said file has gone missing sometime between May 2022 to October 2022. The PIO, in whose safe custody relevant records are supposed to be maintained, appears that, has failed in his responsibility to keep the records safe. However, in the absence of any evidence, the Commission is unable to hold the then PIO or the present PIO guilty of not preserving the records in safe custody.

9. Further, Shri. Shivprasad Naik, PIO and Administrator of Comunidades of North Zone, vide an affidavit filed on 08/08/2023 has stated that the file bearing no. 1/114/2014/ACNZ of Shri. Sandeep Mote is not available in the office and vide letter dated 17/10/2022 he had requested Mapusa Police Station to register First Information Report, hence, he cannot provide the said information.
10. Although the PIO has filed an affidavit swearing that the file is not available in his office, and though, anytime the statement in the affidavit is found false and the person swearing it would be liable for action for perjury, the Commission cannot lose sight of the fact that the said file was available in the records of the PIO and the truth behind the missing of the said file needs to be investigated for further appropriate legal action.
11. 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 :

*"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”.*

12. Para 8 of the same Judgment reads –

*"8. 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”.*

13. Subscribing to the ratio laid down in the above mentioned judgment 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 complaint having been registered in Mapusa 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 Code of Communitades, Legislative Diploma 2070 dated 15/04/1961 under which, such documents are required to be maintained. And therefore, an appropriate order is required to be passed by the Competent Authority so that the liability is fixed and records are traced.

14. In the light of above discussion, the present appeal is disposed with the following order:-

- a) Additional Collector- III (Bardez) and FAA is directed to undertake inquiry into the issue of non- traceability of file no. 1/114/2014/ACNZ year 2014 of Sirsaim Village of Bardez Taluka and initiate appropriate proceeding against the officers/ staff, found responsible for missing of the said document.
- b) Additional Collector- III (Bardez)/ FAA shall send the compliance report with respect to para (a) above, within 120 days from receipt of this order.

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.