

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 222/2023/SIC

Minguel Fernandes,
H. No. 225/1, Sinquetim,
Navelim, Salcete Goa 403707

-----Appellant

v/s

1. The Public Information Officer,
Village Panchayat,
Cana, Benaulim, Salcete Goa 403716.

2. The First Appellate Authority,
Block Development Officer-I-Salcete,
Margao-Goa.

-----Respondents

Relevant dates emerging from appeal:

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| RTI application filed on | : 26/04/2023 |
| PIO replied on | : Nil |
| First appeal filed on | : 29/05/2023 |
| First Appellate Authority order passed on | : 13/06/2023 |
| Second appeal received on | : 23/06/2023 |
| Decided on | : 30/11/2023 |

ORDER

1. The second appeal filed by the appellant under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), against Respondent No. 1, Public Information Officer (PIO) and Respondent No. 2, First Appellate Authority (FAA), came before the Commission on 23/06/2023.
2. The brief facts as contended by the appellant are that, the appellant had sought information on six points from PIO. Upon not receiving complete information he filed first appeal before the FAA. FAA while disposing the appeal directed PIO to furnish the information within 10 days. It is the contention of the appellant that the order of the FAA was not complied by the PIO, hence, he has appeared before the Commission by way of second appeal.
3. Pursuant to the notice, appellant appeared in person praying for complete information. Shri. Shrirang Agrasani, PIO appeared, filed reply dated 28/08/2023 and additional reply dated 11/09/2023. On 23/11/2023 PIO filed affidavit dated 22/11/2023. None appeared for FAA, however, reply on his behalf was received in the entry registry

dated 10/08/2023. Appellant filed submission dated 23/10/2023 and 30/11/2023.

4. PIO stated that, he had furnished the information as available to the appellant. Also, as directed by the FAA, he had provided available information. However, he cannot furnish part of the information which is not available in the records of Village Panchayat Cana Benaullim.
5. FAA submitted that, he had heard both the sides and disposed the appeal as provided under the Act, with directions to the PIO to furnish the information sought by the appellant.
6. Appellant contended that, the PIO has given incomplete and wrong information inspite of clear direction by the FAA to furnish complete information. That, he requests the Commission to direct the PIO to furnish information on point no. 2 to 6 of his application.
7. Upon perusal of the available records it is seen that the appellant had sought information on six points and was aggrieved since his application was not replied by the PIO within the stipulated period. Later, in compliance with FAA's direction, PIO issued letter dated 22/06/2023 to the appellant providing information on point no. 1. Aggrieved by the said action, appellant approached the Commission.
8. PIO during the present hearing vide reply dated 11/09/2023 furnished additional information, however, submitted that relevant documents are not available in the records of Village Panchayat. This being the case, the Commission directed the PIO to provide inspection of the relevant records to the appellant and both the parties agreed to undertake inspection. Accordingly, inspection was carried out, yet the appellant continued to remain aggrieved contending that the PIO has not shown correct documents for inspection.
9. On this background the PIO was directed by the Commission to file an affidavit with respect to the status of the information sought by the appellant. PIO vide an affidavit dated 22/11/2023 stated, "I say that Mr. Minguel Fernandes had filed application dated 26/04/2023 under Right to Information Act, 2005 requesting for information. I say that with regards to the information asked under Right to Information Act, 2005 by Minguel Fernandes, I submit that there are no documents available in records of Village Panchayat of Cana Benaullim".

10. The Commission observes that the PIO vide an affidavit has affirmed that no documents pertaining to the information sought by the appellant are available in the records of the said Village Panchayat. Since the above mentioned statement is made by the PIO by signing an affidavit the Commission accepts the same and finds that the PIO has furnished the information as available. Going by the said affidavit the Commission cannot expect the PIO to furnish non-available information. Needless to say that, in case at any time the statements in the said affidavit are found false, the person swearing it would be liable for action for perjury.
11. However, the Commission notes that the PIO had furnished part information after disposal of the first appeal and additional information during the present appeal proceeding. Also, the PIO had undertaken before the Commission to furnish complete information, subsequently stated that the documents with respect to the information sought are not available in his records. Thus, it can be ascertained that the information sought by the appellant at some point of time was available in the records of Village Panchayat Cana-Banaulim and subsequently some of the documents as stated by the PIO, are not available in the records. Here, the PIO upon knowing that some documents are missing, was required to take appropriate action such as informing his superiors and registering police complaint. However, PIO took no such action.
12. 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”.

13. 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”.

14. In the background of the facts and findings as mentioned earlier, it is concluded that, with respect to the affidavit filed before the Commission, the PIO cannot be directed to furnish remaining information. However, subscribing to the ratio laid down by the Hon'ble High Court of Delhi in the above mentioned judgement, the PIO or the authority cannot be absolved of the responsibility under this Act or the Act governing the Village Panchayat, under which such documents are required to be maintained. Therefore, appropriate order is required to be passed so that the liability is fixed and records are traced.

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

- a) The Director of Panchayats is directed to undertake inquiry into the issue of non availability of documents pertaining to the information sought by the appellant vide application dated 26/04/2023, from the office of PIO/Secretary, Village Panchayat Cana-Banaulim.
- b) The Director of Panchayats shall complete the inquiry, initiate appropriate proceedings against the Secretary/ Secretaries of Village Panchayat Cana-Banaulim, responsible for non-availability of the said documents.
- c) The Director of Panchayats is directed to submit inquiry report and compliance report to the Commission within 120 days from today.
- d) 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.