

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 278/2022/SIC

Rajesh R. Wadkar,
R/o. H.No. 118, St. Jerome Waddo,
Xelpem, Mapusa, Bardez-Goa,
403507.

-----Appellant

v/s

1. The Public Information Officer,
Mr. Sanjeev Signapurkar,
O/o Mamlatdar of Tiswadi Taluka,
Panaji-Goa, 403001.
2. The First Appellate Authority,
Mamlatdar of Tiswadi Taluka,
Panaji-Goa, 403001.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 07/01/2022
PIO replied on	: 03/02/2022
First appeal filed on	: 28/02/2022
First Appellate Authority order passed on	: 04/10/2022
Second appeal received on	: 31/10/2022
Decided on	: 15/05/2023

ORDER

1. Being aggrieved by non furnishing of the information and dismissal of the first appeal, appellant under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), filed second appeal against Respondent No. 1, Public Information Officer (PIO) and Respondent No. 2, First Appellate Authority (FAA), which came before the Commission on 31/10/2022.
2. It is the contention of the appellant that, vide application dated 07/01/2022 he had sought certain information from the PIO. PIO vide reply dated 03/02/2023 informed him that the said information is not available in the office records. Not satisfied with the reply appellant preferred appeal before the FAA which was dismissed vide order dated 04/10/2022. It is the contention of the appellant that, the said information has to be available in the records of the PIO, hence he has appeared before the Commission by way of second appeal.
3. Notices were issued to the concerned parties, pursuant to which appellant appeared in person and prayed for the information. Shri. Sanjeev Signapurkar, the then PIO and Smt. Anusha Gaonkar, the

present PIO appeared, the present PIO filed reply dated 04/01/2023 and submission dated 28/03/2023.

4. PIO stated that, the appellant vide reply dated 03/02/2022 issued within the stipulated period was informed that the information sought is not available in the office records. Later, upon the direction of the FAA search was undertaken, however, the said information was not traceable. Accordingly, the FAA dismissed the appeal. PIO further stated that, again during the proceeding of the second appeal yet another search was carried out upon the direction of the Commission. In spite of these efforts the relevant information was not traceable. Thus, the requested information is not available in the records of the PIO.
5. Upon perusal it is seen that, the appellant vide his application filed under Section 6 (1) of the Act, had sought certified copy of the allotment list of shops in shopping complex at Old Goa, constructed during CHOGM time. It is the contention of the appellant that shop no. A-10 in the said complex was allotted on lease to late Shri. Rajaram Krishna Wadkar, father of the appellant.
6. Appellant has produced two documents to establish that the said shop was allotted to his father, late Shri. Rajaram Krishna Wadkar. Appellant has procured both these documents under the Right to Information Act from the Public Information Officer of Directorate of Agriculture, on 20/10/2021. First document- 'List of allottees of shops in shopping complex at Old Goa' shows at serial number 23, against shop no. A-10, name of Rajaram Krishna Wadkar. The second document is dated 03/10/1994, issued by Shri. C. V. Kawlekar, the then Mamlatdar of Tiswadi, addressed to the Deputy Collector & Estate Officer, Panaji regarding "Recovery of rent from the allottees of shops in the shopping complex at Old Goa constructed during CHOGM time". The said document mentions that the allotment was done in November 1983 by the then Deputy Collector of North Goa, Panaji and Mamlatdar of Tiswadi.
7. It appears from the above mentioned details that shop no. A-10 in the said shopping complex was allotted to Shri. Rajaram Krishna Wadkar and the said allotment was done by the Deputy Collector of North Goa and Mamlatdar of Tiswadi. Considering these facts, the Commission hold that the office of the PIO, office of the Mamlatdar of Tiswadi is required to have in their custody documents pertaining to the said allotment.

8. The then PIO and the present PIO might have carried out the search only to find that the relevant information is not available. However, it is clear that the said information was part of the records of the office of the Mamlatdar of Tiswadi at some point of time. Hence, the said information has to be available and non availability of the said documents will deprive the appellant of his statutory right of seeking the same.
9. It is noted that the information sought by the appellant is more than 30 to 40 years old, hence respondents - the then PIO and the present PIO cannot be held responsible for missing of the said information in the absence of any evidence on record. At the same time the PIO cannot be absolved of the responsibility of furnishing the information and the appellant cannot be deprived of the information.
10. 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 in 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”.

11. 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”.

12. Subscribing to the ratio laid down by the Hon'ble High Court of Delhi in the above mentioned judgment and considering the findings in the present matter, the Commission concludes that the PIO has to undertake rigorous search of the records once again and in spite of the search if the relevant documents are still not traceable, then an appropriate inquiry needs to be instituted into the issue of the information being not available in the records of the PIO, which was available at some point of time. The inquiry will have to be conducted by the Mamlatdar of Tiswadi, being in charge of the office of the said public authority.

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

- a) Present PIO is directed to trace the records and furnish the information sought by the appellant vide application dated 07/01/2022, within 20 days from the receipt of this order, free of cost.
- b) Mamlatdar of Tiswadi Taluka is directed to conduct appropriate inquiry into the claim of said records not traceable in the office of PIO, in case the information is not traced and furnished to the appellant within 20 days, as mentioned above in para (a).
- c) Mamlatdar of Tiswadi Taluka is directed to complete the said inquiry within 120 days from the receipt of this order and send

the report to the Commission and a copy of the report to the appellant.

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