

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 132/2022/SIC

Dr. K.K. Nadkarni,
H. No. 84, Bendwada,
Sanguem - Goa 403704.

-----Appellant

v/s

The Public Information Officer,
Goa Tourism Development Corporation Ltd,
3rd Floor, Paryatan Bhavan,
Patto, Panaji-Goa 403001.

-----Respondent

Relevant dates emerging from appeal:

RTI application filed on	: 27/01/2022
PIO replied on	: 24/02/2022
First appeal filed on	: 14/03/2022
First Appellate Authority order passed on	: Nil
Second appeal received on	: 17/05/2022
Decided on	: 23/01/2023

ORDER

1. Appellant, aggrieved by non furnishing of complete information and non hearing of first appeal, filed second appeal under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), against Respondent Public Information Officer (PIO), which came before the Commission on 17/05/2022.
2. It is the contention of the appellant that, he was not furnished complete information by the PIO, and whatever information provided is false, fabricated, misleading and incomplete. Appellant further contended that he had filed appeal against the PIO before the First Appellate Authority (FAA), however FAA neither issued notice, nor passed any order, hence he has approached the Commission for getting complete and correct information.
3. The concerned parties were notified and the matter was taken up for hearing. Advocate Pranita Gawandi appeared on behalf of Shri. Sajulo K. Narvekar, PIO and filed reply on 12/09/2022, affidavit of General Manager of the authority i.e. Goa Tourism Development Corporation Ltd (GTDC). Later Adv. Pranita Gawandi filed a memo on 24/11/2022 and affidavit of the PIO on 13/12/2022. Appellant vide his submission sent on email informed the Commission that he is not able to attend the proceeding due to health issues, however filed submissions

received in the registry dated 16/06/2022, 17/06/2022, 07/07/2022, 26/07/2022, 17/08/2022, 07/09/2022, 12/09/2022, 30/09/2022, 31/10/2022, 14/11/2022, 09/12/2022 and 13/12/2022. Appellant vide request letter dated 27/12/2022 collected copy of submission and affidavit filed by the respondent PIO.

4. Appellant stated that, PIO has intentionally provided him false fabricated, misleading, and incomplete information. Further, the FAA never scheduled hearing on the first appeal and did not pass any order by going into the merits of the application of the appellant. That, the information sought by him is clear and specific and the said information has to be available in the records of the PIO, however the PIO has not responded to his continuous efforts to get the required information.
5. Appellant further contended that, the PIO has given contradictory replies to his queries in the present matter and similar queries in earlier matter. Information cannot be denied on the ground that the files cannot be traced. Similarly, relevant files if really misplaced, the PIO was required to take necessary action as per the provision of the law like filing police complaint etc. Appellant alleged that some of the information furnished by the PIO is fabricated or created as per the convenience of the authority after receipt of the application, which is the subject matter of the present appeal.
6. PIO stated that, he had furnished part information which was available in the record. That later, during the present proceeding he requested Chief Accounts Officer and General Manager (Admn) to provide the additional information. Accordingly, information on point no. 6 and 7, received from General Manager (Admn) and information on point no. 7, received from Chief Accounts Officer has been furnished to the appellant. That, the PIO has taken all possible efforts to ensure that the available information is provided to the appellant.
7. PIO vide an affidavit filed on 13/12/2022 stated that documents pertaining to information sought by the appellant on point nos. 1 to 6 and point no. 8 are already furnished to the appellant, however, information requested on point no. 7 could not be furnished since the file is misplaced and is not traceable as per information provided by General Manager (Admn). PIO further stated in the affidavit that the appellant, when posted as Manager (Admn) in the Project Cell of Special Purpose Vehicle (SPV), Goa Tourism Development Corporation Ltd (the public authority in the instant matter), himself had put noting under note bearing no. 0-14/Admn/PC/GTDC/99 that

the said particular file is not traceable. That, since then the said file is not traceable and is misplaced.

8. The Commission has perused the replies and submissions of both the sides. Upon careful perusal of the records it is seen that, the appellant had sought information on eight points, out of which information on point nos. 1 to 6 and information on point no. 8 has been furnished by the PIO at different stages, i.e. during the stipulated period of 30 days from the receipt of the application and during the proceeding of the second appeal before the Commission. Appellant has termed the said information as false, fabricated, misleading, and incomplete. However, the appellant was required to produce some evidence /documents to substantiate his contention. Appellant has neither produced any substance to prove his contention, nor produced before the Commission the information received from the PIO. Hence, the Commission cannot accept the contention of the appellant that the information received from the PIO is false, fabricated, misleading, and incomplete. Yet the fact remains that the PIO did not furnish the entire available information within the stipulated period, as required under Section 7 (1) of the Act.
9. Now the question remains to be decided pertains to the status of information sought by the appellant on point no. 7 of his application. Replies on three different occasion were filed by the PIO in relation with information on point no. 7, as under:-
 - a) PIO vide reply dated 24/02/2022 issued to the appellant stated: As regards to a):- The concerned file was outwarded from Admin section of SPV and inwarded in GTDC. However, the said file is not received back in Admin section of SPV. As regards to b):- File was outwarded from Admin section of SPV but was not inwarded in GTDC. As regards to c):- Such reference number file is not available.
 - b) PIO vide reply dated 12/09/2022, filed before the Commission stated: As regards to a):- The concerned file was outwarded from Admin section of Project Cell under SPV and inwarded in GTDC on 08/01/2016. However, till date the said file is not received back in Admin section of Project Cell under SPV. It is also a fact that a search has been conducted in GTDC to locate the said file. However, the said file is not traceable in GTDC. As regards to b):- File was outwarded from Admin section of Project Cell under SPV on 06/07/2016 but was not inwarded in GTDC. The said file is not traceable in Admin section, of Project Cell under SPV and also in GTDC even after conducting thorough search of the said file. As

regards to c):- As per the records for the year 2016-17 of the Admin section of Project Cell under SPV such reference number file is not available. However, as per the records of the Admin section of Project Cell under SPV for the year 2017-18, a file No.14/Admn/PC/GTDC/99 was outwarded from Admin section of Project Cell under SPV and inwarded in GTDC on 08/05/2017. There after, till date the said file is not received back in Admin section of Project Cell under SPV. Further, the said file is not traceable in GTDC even after conducting thorough search of the said file.

c) PIO vide affidavit dated 12/12/2022 filed before the Commission on 13/12/2022 stated, I say that the said documents file is misplaced and is not traceable. I say that when the appellant was posted as Manager (Adm.) in the Project Cell of Special Purpose Vehicle, Goa Tourism Development Corporation Ltd., he himself had put noting under note bearing no. o-14/Admn/PC/GTDC/99 that the said particular file is not traceable. I say since then the said file is not traceable and is misplaced.

10. From the above replies of the PIO, it appears that, the relevant files pertaining to information on point no. 7 of the application were existing in the office at some point of the time. Subsequently, the said files were outwarded from Admin section/ Project Cell under SPV and inwarded in GTDC. In one case PIO contends that file was outwarded from Admin section but not inwarded in GTDC.
11. Here, the Commission finds that the movement of the said files has taken place within two or three sections of the authority. Meaning, no file was sent out to any other authority. PIO in the present matter is the custodian of entire records of the authority, i.e. GTDC, irrespective of the fact that the said authority has more than one section. Being the custodian the PIO was required to maintain all records in safe condition. PIO has nowhere stated that some files were outwarded to any other authority. The said movement of the files pertaining to point no. 7 has taken place within the different sections of the authority, hence PIO must have complete knowledge of the status of the said files.
12. It is the contention of the PIO that the files are missing and not traceable. It is seen from the records that the movement of the files has taken place in 2016-17 and 2017-18. Similarly, PIO has stated in the affidavit that the appellant, while in the service of GTDC as Manager (Admin), himself had noted that the particular file is not traceable and since then the said file is not traceable and is

misplaced. Now, the question arise is that if the files were missing and the PIO was aware of it, then what corrective action did he take? PIO was required to update his senior officers and undertake rigorous search to trace the missing files, initiate an internal enquiry and if nothing works out, then he was required to register a police complaint.

13. Strangely, the Commission finds that the PIO has not taken any such action required to safeguard the records of his authority. More surprisingly, PIO is not even willing to take responsibility of the entire authority by pointing out faults of Admin Section / Project Cell under SPV. Similarly, it has been observed that the PIO in the present matter instead of owning the responsibility, every time has done the job of 'postman' by simply forwarding replies received from various officers of the authority. As provided under Section 5 (3) of the Act, PIO was required to render reasonable assistance to the applicant and under Section 5 (4) of the Act, take assistance of other officers, if required. PIO is expected to know the duties enshrined by the Act, act responsibly by applying his mind, and furnish the information to the applicant under Section 7 (1) of the Act. In the present matter, pertaining to information on point no. 7, PIO has failed in every aspect.
14. Hon'ble High Court of Delhi in W.P. (c) 900/2021 and CM APPL 2395/2021, in Rakesh Kumar Gupta (Erstwhile CPIO) Union Bank of India & Ors v/s Central Information Commission & Anr. has held in para 16:-

"16. Thus, under the RTI Act, the CPIOs have a solemn responsibility. Section 5(3) requires that every CPIO or SPIO shall deal with requests for information and 'render reasonable assistance' to the persons seeking information. CPIOs or SPIOs can seek assistance from higher/other officials in the organisation in order to enable them to furnish the information sought for the 'proper discharge' of their duties, as per Section 5(4). Such other officers from whom assistance may be sought would also be treated as CPIOs, under Section 5(5). CPIOs are thus expected to look into queries raised by the Applicants under the RTI Act, and fulfil an important responsibility while furnishing the said required information, in a fair, nonarbitrary and truthful manner. The organisation, as a whole, also has to cooperate in the functioning of the CPIOs."

15. 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".

16. 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".

17. In J.P. Agrawal v/s Union of India & Ors, W.P. (c) 7232/2009, decided on 4th August 2011, the Hon'ble High Court of Delhi has recognised that CPIOs/ PIOs are not merely "post offices " and have a crucial responsibility in facilitating the purpose of the Act. The Court has held:-

"7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the petitioner would contend. The expression "deal with", in Karen Lambert Vs. London Borough of Southwark (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. As has been noticed above, penalty has been imposed on the petitioner not for the reason of delay which the petitioner is attributing to respondent no.4 but for the reason of the petitioner having acted merely as a Post Office, pushing the application for information received, to the respondent no.4 and forwarding the reply received from the respondent no.4 to the information seeker, without himself "dealing" with

the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the respondent no.4 and/or his department and/or his administrative unit was not what was sought and that the petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the petitioner has not been able to urge any ground on this aspect. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done.

9. This Court in Mujibur Rehman Vs. Central Information Commission held that information seekers are to be furnished what they ask for and are not to be driven away through filibustering tactics and it is to ensure a culture of information disclosure that penalty provisions have been provided in the RTI Act. The Act has conferred the duty to ensure compliance on the PIO. This Court in Vivek Mittal Vs. B.P. Srivastava held that a PIO cannot escape his obligations and duties by stating that persons appointed under him had failed to collect documents and information; that the Act as framed casts obligation upon the PIO to ensure that the provisions of the Act are fully complied. Even otherwise, the settled position in law is that an officer entrusted with the duty is not to act mechanically. The Supreme Court as far back as in Secretary, Haila Kandi Bar Association Vs. State of Assam 1995 Supp. (3) SCC 736 reminded the high ranking officers generally, not to mechanically forward the information collected through subordinates. The RTI Act has placed confidence in the objectivity of a person appointed as the PIO and when the PIO mechanically forwards the report of his subordinates, he betrays a casual approach shaking the confidence placed in him and duties the probative value of his position and the report."

18. On the basis of the above judgments following conclusions can be drawn:-
- i. PIO cannot withhold the information nor can he refuse the information without reasonable cause.
 - ii. PIO has to render assistance to the applicant, take required assistance from the subordinates and ensure that he furnishes the information to the applicant.
 - iii. Public authorities and PIOs ought not to be permitted to evade disclosure of information. Thorough search and enquiry has to

be undertaken before concluding that the information is not traceable / missing.

- iv. PIO is not expected to function merely as "post office", required to apply his mind, own the responsibility and furnish the information or give reasons for non disclosure.
- v. Responsibility of compliance under Section 7 (1) of the Act lies only on the PIO and not on his subordinates, nor on his senior officers.
- vi. PIO cannot be casual in his approach by putting the onus on other officers in his office.

19. With reference to the above mentioned conclusions, the Commission holds that the PIO in the instant matter, pertaining to point no. 7 of the application, has failed to take appropriate action on his contention of files being not traceable, has appeared in causal approach and has failed to comply with the duties and responsibilities bestowed upon him by the Act. The said failure amounts to contravention of Section 7 (1) of the Act, hence PIO is held guilty of not complying with Section 7 (1) of the Act. The said conduct of the PIO cannot be endorsed by the Commission, makes him liable for penal action under Section 20 (1) of the Act. Similarly, PIO is required to carry out search of his records in order to trace and furnish the remaining information and in case unable to trace the information, the status of the files needs to be enquired.

20. The Commission notes with all seriousness that the first appeal filed under Section 19 (1) of the Act by the appellant before the FAA was not heard at all. Section 19 (6) mandates FAA to dispose the appeal within maximum of 45 days from the date of filing thereon. Non hearing of the appeal is considered as de-reliction of duty and such an inaction from senior officer compels appellant to approach the Commission, for which appellant has to incur unnecessary expenditure. FAA is required to abide by the law and dispose the appeals as provided under Section 19 (6) of the Act.

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

- a) Shri. Sajulo K. Narvekar, PIO is directed to trace and furnish the information on point no. 7 sought by the appellant vide application dated 27/01/2022, within 15 days from the receipt of this order, free of cost.
- b) In case the said information is not found within 15 days, then the Managing Director of Goa Tourism Development

Corporation Ltd, is directed to undertake enquiry into the issue of files pertaining to information on point no. 7 being not traceable / missing from the records. The Managing Director shall complete the enquiry and submit the report to the Commission within 120 days from today.

- c) Issue show cause notice to Shri. Sajulo K. Narvekar, PIO, Goa Tourism Development Corporation Ltd and the PIO is further directed to show cause as to why penalty as provided under Section 20 (1) and /or 20 (2) of the Act, should not be imposed against him/ her.
- d) In case the PIO is transferred, the present PIO shall serve this notice alongwith the order to the then PIO and produce the acknowledgment before the Commission on or before the next date of hearing, alongwith the present address of the then PIO.
- e) Shri. Sajulo K. Narvekar, PIO is hereby directed to remain present before the Commission on **27/02/2023 at 10.30 a.m.** alongwith the reply to the showcause notice.
- f) The Registry is directed to send a copy of this order to the Managing Director, Goa Tourism Development Corporation Ltd for appropriate action.
- g) The Registry is directed to initiate penalty proceeding against PIO.

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

