

**GOA STATE INFORMATION COMMISSION**

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

**Appeal No. 14/2023/SIC**

Mrs. Indira Hemant Pai Angle,  
R/o. Laxmi, 110, Opp. Ram Mandir,  
Abade Faria Road, Margao-Goa.

-----Appellant

**v/s**

1. Public Information Officer,  
Archivist (Management),  
Department of Archives and Archaeology,  
Rua de Ourem, Mala,  
Panaji-Goa.

2. The First Appellate Authority,  
Director, Department of Archives,  
Govt. of Goa, Mala, Panaji-Goa.

3. The Police Inspector,  
Panaji Police Station,  
Panaji-Goa.

-----Respondents

**Relevant dates emerging from appeal:**

RTI application filed on	: 29/09/2022
PIO replied on	: 28/10/2022
First appeal filed on	: 14/11/2022
First Appellate Authority order passed on	: 06/12/2022
Second appeal received on	: 09/01/2023
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 from Respondent No. 1, Public Information Officer (PIO) information as below:-

*a) Inventory Orph proceedings (Ilhas) – no – 2116/787*

*b) Inventory Orph proceedings (Ilhas) – no – 665/787*

*For the year 1925*

*Please provide certified copies wherever applicable*

*Apart from the above answers, please allow me to peruse the relevant files and take Xerox copies of any or all documents that I shall need.*

2. The PIO informed the appellant that the file is not traceable. Not satisfied with the said reply, appellant filed first appeal and the FAA vide order dated 06/12/2022 disposed the said appeal. Being aggrieved by

the action of the PIO and the order of the FAA, appellant has approached the Commission by way of second appeal.

3. The concerned parties were notified and the matter was taken up for hearing. Appellant appeared alongwith Advocate Ajit R. Katak and argued for information, quashing of the order of the FAA and penal action against the respondents. Application to implead the Police Inspector of Panaji Police Station was filed on 18/04/2023 by the appellant. Shri. Vasu M. Usapkar, the then PIO appeared initially and filed reply dated 20/02/2023 and submission dated 18/04/2023. Shri. Rajeev Kudke, the present PIO appeared alongwith Advocate K. L. Bhagat and filed submission dated 05/06/2023. Reply dated 20/02/2023 alongwith enclosures was filed on behalf of the FAA.
4. Appellant contended that, he is aggrieved by the stand of the PIO as the PIO is required to maintain the records safe in his custody. In spite of his inability to trace the relevant files, PIO has not taken any appropriate action. Appellant further contended that, the FAA while disposing the first appeal did not deal with any of the grounds of appeal nor issued any direction to the PIO, regarding appropriate action, in case the relevant documents are really not traceable.
5. PIO stated that, the file requested by the appellant was not traceable in his records, accordingly the appellant was informed that as soon as the same is traced the appellant will be informed. PIO further stated that, police complaint was filed on 30/12/2022 before the Police Inspector at Panaji Police Station on non tracing of the relevant files. That his department has furnished required details to the Panaji Police and thus, the PIO has not denied the information to the appellant.
6. FAA submitted that, he has disposed the first appeal as provided by law and held that there was no delay in providing the information by the PIO to the appellant. FAA further submitted that, subsequent to his order disposing the appeal, complaint regarding non tracing of the said file has been filed in the Panaji Police Station.
7. Upon careful perusal of the records of the present matter it is seen that, the appellant Smt. Indira Hemant Pai Angle had requested for information as mentioned in Para 1 and inspection of the relevant files. The information was sought from the PIO of Directorate of Archives. The said Directorate is a record acquiring institute, acquires records more than 25 years old after being closed or recorded from the original department/ institution. These old records are supposed to be stored in

repositories as per the transfer list or check list and service to the public as per the request in as condition, as stated by the PIO.

8. Appellant had requested for court inventory of Ilhas bearing No. 787 for the year 1925, whereas, according to the PIO, the said files are not traceable. It is seen from the records that earlier, vide application dated 04/02/2023 the same applicant had requested for the same information and PIO vide reply dated 03/03/2022 had informed the appellant that "File is not traceable, require time to get the file traced".
9. Appellant after about six months filed another application dated 29/09/2023, which is the subject matter of the instant appeal, seeking the same information and in reply, the PIO informed the appellant vide letter dated 28/10/2022 that, "Yet to trace the file, as soon as it is traced, the applicant will be informed".
10. It becomes clear from the above mentioned facts that the PIO knew in March 2022 that the file pertaining to Court inventory of Ilhas bearing No. 787 for the year 1925 was not traceable, accordingly he had informed the appellant. That being so, the PIO was required to take appropriate action to trace the file or should have informed the officer higher in rank in order to undertake next course of action such as filing a police complaint or undertaking departmental enquiry. The Commission finds that, no such steps were initiated by the PIO and when the appellant sought the same information again after six months, he was given the same reply by the PIO.
11. Curiously, Director of Archives / FAA disposed the first appeal on 06/12/2022 and vide letter dated 30/12/2022 lodged complaint to the Police Inspector, Panaji Police Station regarding non traceability of the said file. The said action should have been taken by the PIO much earlier in March 2022 when he came to know about the non traceability of the file. Interestingly, the letter dated 30/12/2022 addressed to the Police Inspector states that, "The aforesaid file was asked for verification by Gajanan G. Keny on 14 August 2014 which was not returned in its place as per Register maintained in the Section". The said statement elucidates that the authority in 2014 was aware of the fact that the court inventory of Ilhas bearing no. 787 for the year 1925 was not traceable and also knew the suspected elements, yet took no action to ensure that the said file is brought back and kept in the custody of the PIO.
12. This is a serious lapse on the part of the public authority, more so the PIO, that no any action was initiated to ensure that the records are

maintained in the safe custody. On this background appellant vide application dated 18/04/2023 requested the Commission to implead the Police Inspector of Panaji Police Station, since the complaint was filed by the Director of Archives. The Commission directed Police Inspector, Panaji Police Station to file report on the investigation into the said complaint. Shri. Nikhil N. Palekar, Police Inspector of Panaji Police Station filed a report in the entry registry dated 05/07/2023. The said report states that, " it is submitted that, overall enquiry conducted into this matter, looks like the said file is not traceable due to lapses on the part of concerned staff of Archives Department, as such a letter vide No. PI/PAN/5572/2023 dated 27/06/2023 has been sent to the Director of Archives to initiate Departmental action against the individual who is responsible in the above case."

13. It appears from the above mentioned submission that the Police Inspector has done preliminary investigation into the matter and found that the staff of Department of Archives is responsible for missing of the said file and that the Director of Archives needs to initiate action against the concerned staff. Further, the Commission finds that the Police Department is required to investigate the matter in depth in order to help the public authority to trace the said file /wrong doer.
14. Similarly, the Commission holds that, the PIO has failed to maintain the records in the safe custody as required by law. However, in the absence of sufficient evidence the present PIO or the earlier PIO cannot be held guilty for these lapses, as the said information is not traceable since 2014. Nevertheless, appropriate action needs to be initiated into the matter.
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. Since the information sought by the appellant is not traceable in the records of the PIO, and the said fact was confirmed by the Police Inspector of Panaji Police Station, the Commission concludes that PIO cannot be directed to furnish the said information. However, that itself does not absolve PIO and the authority of responsibility under the Act to maintain the records and furnish the information to the applicant. Thus, appropriate order is required to be passed so that the liability is fixed and records are traced.

18. In the background of the findings of the Commission and subscribing to the ratio laid down by the Hon'ble High Court of Delhi, the instant appeal is disposed with the following order:-

- a) The Director of Archives is directed to undertake inquiry into the issue of non traceability of Court inventory of Ilhas bearing No. 787 for the year 1925 and initiate appropriate proceeding against the officers/ staff found responsible for missing of the said files.
- b) The Director of Archives shall complete the inquiry and the proceeding and report to the Commission compliance, within 120 days from receipt of this order.
- c) The Police Inspector, Panaji Police Station is directed to do in depth investigation with respect to non traceability of Court Inventory of Ilhas bearing No. 787 for the year 1925 from the records of Department of Archives.

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