

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 164/2022/SIC

Sebastiao R. Gomes,
H.No. 681, Vidyanagar,
Margao-Goa 403601.

-----Appellant

v/s

1. Shri. Premanand Kalshaokar,
Public Information Officer,
Directorate of Mines & Geology,
Institute Menezes Braganza,
Panaji-Goa 403001.

2. Shri. Abhir Hede,
Dy. Director of Mines & Geology-II,
First Appellate Authority,
Directorate of Mines & Geology,
Institute Menezes Braganza,
Panaji-Goa 403001.

-----Respondent

Relevant dates emerging from appeal:

RTI application filed on	: 03/03/2022
PIO replied on	: 29/03/2022
First appeal filed on	: 20/04/2022
First Appellate Authority order passed on	: 24/05/2022
Second appeal received on	: 17/06/2022
Decided on	: 13/02/2022

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 17/06/2022.
2. It is the contention of the appellant that vide application dated 03/03/2022 he had sought information on two points- i) Details about date of circular no. 19-2-2004-GAD/part dated 30/03/2012 received by PIO's office and a certified copy of inward register of circular received, and ii) name of the Director, Dy. Director and Head Clerk was on duty when the said circular was received by Directorate of Mines & Geology. That the appellant received reply dated 29/03/2022 from PIO stating the said circular was not

inwarded in the Department, hence, question of furnishing information does not arise.

3. It is the contention of the appellant that, being aggrieved, he preferred appeal before FAA, which was disposed as dismissed. Being aggrieved, he has filed the present second appeal before the Commission.
4. The concerned parties were notified and the matter was taken up for hearing. Pursuant to the notice, appellant appeared alongwith his representative Shri. Santana Piedade Afonso. Shri. Premanand Kalshaokar, PIO appeared in person and filed reply on 12/09/2022, 31/10/2022 and 23/11/2022 .
5. Appellant stated that, PIO has not furnished the information and still giving answers same as earlier, provided by him to the RTI application, and reply given by the PIO by stating that 'question does not arise', shows his arrogance. Appellant further submitted that, he has produced the order dated 13/06/2019 passed by the Director of Mines & Geology, which states at page 5, point no. 14 that, "subsequently, a note in view of circular dated 30/03/2012 was submitted to the Government, pertaining to posts of Field Supervisors for consideration." The said order shows that the Directorate of Mines & Geology, which is the authority represented by the PIO had received the said circular dated 30/03/2012 some time before 13/06/2019, hence the said circular has to be available in the records.
6. PIO stated that, he had duly replied to the application well within the prescribed time, informing the appellant that the said circular is not inwarded in the department. The copy of inward register also has been furnished to the appellant. PIO cannot compile or collate the information which is not available in the office. PIO further stated that, FAA has dismissed the appeal by upholding the say of the PIO. That second appeal is filed mechanically and the grounds mentioned therein are frivolous, the appellant is abusing the process of law.
7. Shri. Santana Piedade Afonso, arguing on behalf of the appellant contended that, order dated 13/06/2019 passed by the Director of Mines & Geology establishes that the circular sought by the appellant was not only received in the Department, but further, a note based on the said circular was submitted to the Government. Shri. Santana Piedade Afonso further argued that, the same authority in a reply filed before the Commission on 22/12/2021 in Appeal No.

80/2021/SIC, decided vide order dated 18/02/2022, had stated in para 6 that, 'this department has followed proper procedure as per circular no. 19-2-2004-GAD/part dated 30/03/2012. The said statement proves that the Directorate of Mines & Geology, public authority in the instant matter, had received the said circular and the authority had followed procedure as per the said circular, and that the appellant had sought the same information alongwith copy of note and remarks of the officers. In spite of the said facts PIO has been denying the information.

8. The Commission has perused replies and submissions of both the sides and also the appeal memo. It is seen that the appellant has sought information pertaining to the date of receipt of circular no. 19-2-2004-GAD/part dated 30/03/2012 and name of Director, Dy. Director and Head Clerk was on duty when the said circular was received by Directorate of Mines & Geology. PIO issued a reply within the stipulated period stating that, the said circular was never inwards in the Department, hence, the information is not available.
9. It is observed that, PIO has constantly maintained in the instant matter that the said circular, which is the subject matter of the application was not received in his office, and has produced copy of inward register to substantiate his contention. However, as appellant has pointed out, the Commission finds that during the proceeding of Appeal No. 80/2021/SIC, disposed vide order dated 18/02/2022, respondent PIO of the same authority vide reply dated 22/12/2021 at point no. 6 had stated that "This Department has followed proper procedure as per circular 19-2-2004-GAD/part dated 30/03/2012."
10. Similarly, the appellant has requested attention of the Commission towards the order dated 09/01/2023 passed while disposing Appeal No. 219/2022/SIC. The Commission in para 15 of the said order has held that the records of earlier RTI application of the appellant and replies of PIO, also copies of correspondence with various authorities, submitted by the appellant and the observations made by the Commission in Para 14 indicate that the subject matter of the instant appeal i.e. circular 19-2-2004-GAD/part dated 30/03/2012 was received by the authority at some point of time and the senior officers of the authority had initiated appropriate procedure with reference to the said circular. Meaning, the said circular was part of the records of the authority represented by the PIO, hence the Commission cannot accept the contention of the PIO that the said circular was not received by the authority. Thus, the PIO was

required to trace the requested information and furnish to the appellant, in which he has failed.

11. The nature of information sought and the facts of the instant matter are similar to the nature of information sought and facts that of Appeal No. 219/2022/SIC, decided on 09/01/2023. Thus, the Commission holds in the present matter that the said circular, sought by the appellant was part of records of the PIO at some point of time and the contention of the PIO pertaining to the non receipt of the said circular in his department cannot be accepted.
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 :

"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 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 Judgment (supra) reads –

"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. Subscribing to the ratio laid down by the Hon'ble High Court of Delhi and with respect to the findings of the Commission, it is held that the PIO was required to trace and furnish the information sought by the appellant and if not traceable then the contention of the PIO needs to be verified by conducting an appropriate enquiry. PIO cannot be absolved from his responsibility under the Act, under which all relevant documents are required to be maintained, in order to facilitate the information seeker.

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

- a) PIO is directed to undertake thorough search and trace the records sought by the appellant vide application dated 03/03/2022 and furnish the information within 20 days from the receipt of this order, free of cost.
- b) In case the said records are not traced within 20 days, the Director of Mines and Geology is directed to conduct an appropriate enquiry into the issue of the said records being not traceable in the office of the PIO.
- c) Director of Mines and Geology is directed to complete the enquiry and submit a copy of the report to the Commission within 120 days from today.

d) Registry is directed to send a copy of this order to the Director, Directorate of Mines and Geology, Government of Goa, for appropriate action.

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