

**GOA STATE INFORMATION COMMISSION**

“Kamat Towers” 7<sup>th</sup> Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: [spio-gsic.goa@nic.in](mailto:spio-gsic.goa@nic.in) Website: [www.scic.goa.gov.in](http://www.scic.goa.gov.in)

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

**Appeal No. 168/2022/SIC**

Mr. Jervis Fernandes,  
R/o. H. No. 69/A, Gunebhat,  
Bamonsai, Sanguem-Goa.

-----Appellant

**v/s**

1. The Public Information Officer,  
The Chief Officer,  
Sanguem Municipal Council,  
Sanguem-Goa.

2. The First Appellate Authority,  
Additional Director of Municipal Administration,  
Dempo Towers, Patto,  
Panaji-Goa.

-----Respondents

**Relevant dates emerging from appeal:**

RTI application filed on	: 29/12/2021
PIO replied on	: 22/03/2022
First appeal filed on	: 22/02/2022
First Appellate Authority order passed on	: 07/04/2022
Second appeal received on	: 24/06/2022
Decided on	: 04/05/2023

**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 24/06/2022.
2. It is the contention of the appellant that, he received no reply to his application filed under Section 6 (1) of the Act, hence, being aggrieved, filed first appeal before the FAA. FAA vide order dated 07/04/2022 disposed the appeal. Appellant further contends that, PIO and FAA have not applied their mind in order to provide complete and correct information. Thus, appellant preferred the present second appeal before the Commission.
3. Notices were issued to the concerned parties, pursuant to which appellant appeared alongwith Advocate Atish P. Mandrekar. Shri. Bhagwant Anay Karmali, PIO was initially represented by his colleagues under authority and later appeared in person. Appellant filed rejoinder dated 03/10/2022. PIO filed reply on 16/08/2022, say

to the rejoinder of the appellant on 24/11/2022 and submission dated 03/01/2023. Later, Advocate Chirag Angle, on behalf of the PIO on 08/02/2023 produced additional documents and on 02/03/2023 filed a memo placing on record copy of FIR registered by Sanguem Police Station. Ms. Firdous Saba Bepari appeared for the FAA, however, filed no reply.

4. PIO stated that, upon receipt of the application he directed the concerned subordinate to search the records and place the relevant file requested by the appellant, before him. He is officiating as Block Development Officer of Sanguem and is holding additional charge of Sanguem Municipal Council as Chief Officer/ PIO from 1<sup>st</sup> November 2021. Upon receipt of the application dated 29/12/2021 he observed that the records of the Sanguem Municipal Council are not duly catalogued and indexed, and then he instructed the subordinate to take steps to index all the files. That, the information sought pertains to the time not during his tenure and the relevant file is not found in the records. Rigorous search was undertaken by the staff, yet, the said file could not be traced. In the process time was lost and the application remained to be responded within 30 days, and this was neither malafide nor intentional.
5. PIO further submitted that, in compliance to the direction of the FAA he filed a report dated 19/04/2022 to the Police Inspector of Sanguem Police Station requesting the police to carry out inquiry into the matter of the said missing file. The Police Inspector of Sanguem Police Station instead of registering FIR registered a missing report and vide letter dated 20/05/2022 sought information from the PIO and the PIO filed reply dated 14/06/2022 answering the queries raised by the Police Inspector. PIO further stated that, upon knowing that the relevant file is missing from the records, he has taken appropriate action, and furnishing information to the appellant in respect of the records on which PIO cannot lay hands is not possible.
6. Appellant stated that, it was the duty of the PIO to call for the requested information from the subordinates or superiors and furnish the same to the appellant or conduct departmental inquiry or register FIR with respect to the missing file. The correct reply has not been given by the PIO, nor any inspection of records was permitted, as such the said action amounts to deemed refusal under Section 7 (2) of the Act. Further, the appellant stated that the FAA has erred in deciding the first appeal by passing an order against the facts of the case, without application of mind.

7. Appellant further stated that, he had received a letter dated 28/06/2022 from the Police Inspector of Sanguem Police Station wherein, it is stated that, the PIO is not co-operating with the investigation carried out by the Police Department. Appellant further stated that, the PIO being the custodian of the records of his office, has failed to either trace the requested documents or conduct any inquiry.
8. Advocate Atish P. Mandrekar while arguing on behalf of the appellant stated that, PIO failed to furnish the information and took a stand that the concerned file is missing from the records. Subsequently, PIO was required to file FIR with respect to the missing file, yet he filed report in the said matter and did not co-ordinate with the Police Inspector of Sanguem to register FIR. It was only after the direction from the Directorate of Urban Development, PIO proceeded to file FIR in the matter.

Advocate Atish P. Mandrekar further argued stating that, now though the FIR has been registered, appellant is still deprived of the information, thus the responsibility has to be fixed regarding missing of the file. That, PIO initially did not furnish information, subsequently avoided the compliance of the direction of FAA and later did not co-ordinate with the Police Inspector for registering FIR, hence, he insists on getting the information, initiating an enquiry into the matter and presses for issuing show cause notice against the PIO.

Advocate Atish P. Mandrekar relied on Union of India v/s. Vishwas Bhamburkar (W.P.(c) 3660/2012 & CM 7664/2012 (stay), decided by the Hon'ble High Court of Delhi, Rakesh Kumar Gupta (Erstwhile CPIO) Union Bank of India & Ors. v/s Central Information Commission & Anr. (W.P.(c) 900 of 2021 and CM APPL. 2395/2021) decided by the Hon'ble High Court of Delhi and Appeal No. 120/2007/VP, Mrs. Sangeeta Pednekar v/s. Public Information Officer, decided by Goa State Information Commission.

9. Advocate Chirag Angle while arguing on behalf of the PIO stated that, the PIO, upon knowing that the file sought by the appellant was missing, took appropriate necessary action of filing police complaint and subsequently FIR has also been registered. Prior to filing of police complaint, PIO has carried out rigorous search in order to trace the file.

Advocate Chirag Angle further argued stating that, the information sought by the appellant belongs to the period prior to the joining of the present PIO. Thus, he cannot be blamed for missing of the file since the earlier records were not properly maintained by the then PIOs. That the present PIO has followed the mandate of the law and has taken appropriate action. However, the present position is that the information sought is not available in the records, hence cannot be furnished. Thus, he is not liable for penal action, nor he is responsible for the misplacement of the said record.

Advocate Chirag Angle relied on Central Board of Secondary Education and Anr. v/s. Aditya Bandopadhyay and Ors. (Civil Appeal No. 6454 of 2011 (Arising out of SLP (c) No. 7526/2009), decided by the Hon'ble Supreme Court, Registrar of Companies & Ors. v/s. Dharmendra Kumar Garg & Anr. (W.P. (c) 11271/2009, decided by the Hon'ble High Court of Delhi and Union of India v/s Vishwas Bhamburkar (W.P.(c) 3660/2012 & CM 7664/2012 (stay), decided by the Hon'ble High Court of Delhi

10. The Commission has perused the replies and other submissions and heard arguments of both the sides. Upon careful perusal it is seen that the appellant vide application dated 29/12/2021 had sought for information on seven points (a to g) in respect of a building owned / constructed by one Rumaldo Judas Agnelo Fernandes (Rosa Maria Apartment). According to the contention of the PIO, he carried out search of his records to find the relevant file and that he realized it is missing, only after receiving the application and that he took appropriate action of registering a report to the Police Inspector of Sanguem Police Station and that the said information belongs to the period prior to his tenure.

On the other hand, appellant contends that PIO has failed to comply with Section 7 (1) of the Act which has resulted into deemed refusal of the request under Section 7 (2) of the Act. Also, appellant is holding both – the PIO and the FAA responsible for the said failure and contends that the PIO, in order to protect the interest of some entity, is not co-operating with the police investigation.

11. Going by the records of the instant matter the Commission notes that, the information sought by the appellant was part of the records of the PIO at some point of time. Hence, as per the provisions, PIO being the custodian of the records of his office is responsible for maintaining and preserving the records safely for the benefit of citizens. However, in the present matter PIO found that the said file is missing from the records and records indicate that the said

information pertains to the period prior to beginning of the term of present PIO. Similarly, it is observed that the files of the authority were not indexed and catalogued, hence, keeping track of the files is difficult. However, the present PIO cannot be blamed for this lapse, since earlier Chief Officers / PIOs are responsible for the said lapse. It appears that the present PIO, after knowing that the requested file is missing and that the files are not properly maintained instructed his subordinates to take steps to index all the files.

12. It is also seen that as per the direction of the FAA, the PIO vide letter dated 19/04/2022 filed a complaint before the Police Inspector of Sanguem and missing report was registered on the same day. Further, some queries pertaining to the complaint were raised by the Police Inspector vide letter dated 20/05/2022, which was replied vide letter dated 14/06/2022 by the PIO. Further, upon the request of Police Inspector of Sanguem Police Station, Shri. Ganesh K. Barve, Deputy Director was appointed by the Director of Urban Development Department to look into the matter and Shri. Ganesh K. Barve in his report dated 28/09/2022 concluded that date, time, exact location of the said missing file is not known, and recommended that the Chief Officer of Sanguem Municipality lodges a FIR for missing of the said file. Accordingly, Director Urban Development vide letter dated 25/10/2022 directed the PIO/ Chief Officer to file FIR in the matter. Complying with the said direction, PIO vide letter dated 22/11/2022 requested Police Inspector of Sanguem Police Station to lodge FIR against unknown persons in the matter of missing of construction license file of license bearing no. SMC/Const-License/2009/56 dated 10/11/2009, Shri. Rumaldo Judas Fernandes. The FIR was registered by the Police Inspector of Sanguem on 27/01/2023 at Sanguem Police Station.

13. The said FIR registered under Section 154 Cr. P.C. states that:

“On the DTPO mentioned above, unknown accused person who was entrusted with a construction license file of Mr. Rumaldo Fernandes bearing No. SMC/Const-License/2009/56 dated 10/11/2009 and outward register dated 08/02/2011 to 20/08/2013 belonging to Sanguem Municipal Council has dishonestly misappropriated the said files. Thus, committed a criminal breach of trust. Hence Sanguem PS Cr. No. 05/2023, U/s 408 IPC stands registered”.

14. On the background of the facts mentioned above the Commission finds that, the information sought by the appellant is missing from the records of the PIO, however, since the date, time, location of the missing file is not known, also the person responsible for the said

lapse is not known, the present PIO cannot be held liable for missing of the said file. Similarly, since the FIR has been registered, it is for the Police Department to investigate and conclude on the issue of missing of the file. Only then responsibility can be fixed and appropriate action can be initiated against the guilty persons. Similarly, since the Police Department is investigating the matter, there is no need for any directions to the PIO or Director of Department of Urban Development to undertake enquiry into the same matter.

15. The Hon'ble Supreme Court in a decision reported in AIR 2012 Pat 60; letters appeal no. 1270 of 2009 in Civil Writ Jurisdiction Case 11913/2009; Shekarchandra Verma v/s. State Information Commission, Bihar has held :-

*"In our view, the RTI Act contemplates furnishing of information which is available on record, but it does not go so far as to require an authority to first carry out an enquiry and collect, collate information and then make it available to applicant".*

16. In another matter the Hon'ble High Court of Bombay at Nagpur Bench, in the matter of State Information Commission v/s. Tushar Dhananjay Mandlekar, L.P.A. No. 276/2012, in Writ Petition No. 3818/ 2010 (D) has held that law does not compel the person to do what is impossible.
17. Subscribing to the ratio laid down in the above mentioned cases and considering the findings of the Commission in the present matter, PIO can neither be held guilty for non furnishing of the information, nor can he be directed to furnish any information which currently does not exist in the records of the PIO. Thus, the Commission concludes that the appellant at this stage cannot be granted any relief. However, the appellant shall be free to seek the same information from the public authority, upon completion of the investigation by Police Department.
18. In the light of above discussion, the instant appeal is disposed accordingly and the 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