

GOA STATE INFORMATION COMMISSION

“Kamat Towers” 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in Website: www.scic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 190/2022/SIC

Nixon L. Furtado,
H. No. 51, Copelwaddo,
Sernabatim, Salcete-Goa 403708.

-----Appellant

v/s

1. The Public Information Officer,
Office of the Block Development Officer,
Salcete-I,
Margao, Salcete-Goa.

2. The First Appellate Authority,
Office of the Dy. Director of Panchayats South,
Margao, Salcete-Goa.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 22/03/2022
PIO replied on	: 20/04/2022
First appeal filed on	: 05/05/2022
First Appellate Authority order passed on	: Nil
Second appeal received on	: 06/07/2022
Decided on	: 24/04/2023

ORDER

1. Being aggrieved by non receipt of the information sought under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), appellant under Section 19 (3) of 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 06/07/2022.
2. The brief facts of the appeal, as contended by the appellant are that, he had sought for inspection of file and documents with reference to one complaint dated 20/07/1999 filed by the then Block Development Officer, Margao. It is the contention of the appellant that being aggrieved by the refusal to furnish the said information from the PIO, he filed appeal before the FAA. Notice was issued by the FAA for hearing on 31.05.2022, however the appeal was not decided. Further, appellant appeared before the Commission by way of second appeal.
3. The concerned parties were notified and the matter was taken up on board for hearing. Shri. Pradeep Tamhankar appeared on behalf of

respondent PIO, under authority letter, filed reply on 09/11/2022 and rejoinder dated 15/12/2022. Appellant appeared in person initially and later was represented by Shri. Nevil B. Furtado, under authority letter. Shri. Nevil B. Furtado argued on 27/09/2022 and 18/10/2022 and filed submission on 04/04/2023.

4. PIO stated that, he has no intention of refusing the information to the appellant. However, the relevant information is not available in the office records where the office is functioning presently, and the appellant was informed accordingly within the stipulated period. Further, PIO has no malafide intention nor any ulterior motive in blocking the requested information. The said circumstances occurred only due to non availability of the requested documents in the present premises where the office is functioning, since the said records pertain to the year 1999, when the office was functioning elsewhere.
5. PIO further contended that, the complaint regarding missing of office records was lodged before the Margao Town Police Station vide letter dated 01/12/2022. The request letter dated 07/12/2022 to provide the copy of FIR registered against the said complaint was moved to the concerned police station. After several calls to the police station, the PIO has received intimation dated 13/12/2022 from Police Inspector of Margao Town Police Station that the said complaint is transferred to Fatorda Police Station for want of jurisdiction.
6. Shri. Nevil B. Furtado, while arguing on behalf of the appellant stated that, he had sought for inspection of file and documents pertaining to one complaint filed by the then Block Development Officer, Margao, on 20/07/1999. PIO while replying to the application stated that the information sought is not available in the office. Later, during the present proceeding PIO filed police complaint requesting Margao Town Police to register FIR with respect to missing of the relevant documents. However, PIO has not proved that the file sought for inspection is destroyed and not available. This amounts to forgery, because all files pertaining to the said complaint dated 20/07/1999 are missing from the records.
7. Shri. Nevil B. Furtado further argued on behalf of the appellant that, during the course PIO forwarded a submission dated 31/05/2022 stating that the entire record stored at the old building of Village Panchayat Sao Jose de Areal are destroyed and decomposed. It was stated further on behalf of the appellant that, even though the complaint dated 01/12/2022 has been filed against the said missing

file, the beneficiary of the repair certificate dated 01/10/1985, which was part of the said missing file, have been producing notarised copy of the repair certificate before various authorities, due to which the appellant is at the receiving end and is aggrieved.

8. Upon perusal it is seen that, the appellant vide application dated 22/03/2022 had requested for inspection of some files pertaining to complaint filed by the then Block Development Officer, Margao on 20/07/1999. FIR was registered on 17/08/1999 by the then Police Sub Inspector, Colva Police Station. The said FIR stated that "Unknown staff of Colva Panchayat forged a N.O.C. Certificate to undertake repairs of a structure intending that the forged certificate be used for the purpose of cheating thereby fraudulently consenting that individual shall retain the property. Hence, offence u/s 468 IPC registered".
9. It appears from the above mentioned FIR that some unknown staff of Colva Panchayat were involved in preparing a forged N.O.C. and according to the appellant the said N.O.C. was issued on 01/10/1985 to some beneficiary which is being used by the said beneficiary before various authorities. Ironically, this means that, the N.O.C. against which FIR was filed by the then Block Development Officer in the year 1999 was part of the records of the respondent PIO, Block Development Officer, Salcete and the inspection of the same is denied to the appellant by the PIO by stating that the said file is missing from the records, however, the allegedly forged N.O.C. which was part of the said file is being used by the beneficiary, to the disadvantage of the appellant in the present matter.
10. It is observed that the PIO, though replied within the stipulated period and informed the appellant that the information sought is not available, took no immediate action in order to undertake rigorous search or to file police complaint regarding missing of the records. It was only after the second appeal was filed by the appellant, that the PIO initiated action to appoint Shri. Gurudas Gaonkar, ED (VP) for searching and indexing of the records of Village Panchayat Raia and Sao Jose de Areal and later vide letter dated 01/12/2022 filed police complaint before Margao Town Police Station, which was transferred to Fatorda Police Station, on 13/12/2022.
11. The Commission here finds the PIO guilty of not taking appropriate action immediately after noticing that the documents sought by the appellant are not traceable in the records. The matter is more serious because the concerned file which contains the N.O.C., which is

allegedly a forged documents, is missing from the records of the PIO, and the notarised copy of the said N.O.C. is being used by the beneficiary before various authorities.

12. Nevertheless, the present PIO has filed police complaint and the said matter is currently before the Fatorda Police Station for investigation. This being the case, the Commission is unable to direct the PIO to provide for inspection of the document sought vide application dated 22/03/2023. However, that itself does not absolve the PIO or the public authority concerned herein of the responsibility under this Act, under which such documents are required to be maintained. Hence, appropriate order is required to be passed so that the liability is fixed and records are maintained in safe custody.
13. Similarly, it is noted from the records of the present matter that, the first appeal filed by the appellant was not heard and decided by the FAA. Section 19 (6) of the Act requires FAA to dispose the appeal filed under Section 19 (1) of the Act, within maximum of 45 days and non adherence to the provision of the Act is considered as dereliction of duty.
14. 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 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”.

15. 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”.

16. In the background of the facts and findings as mentioned above and subscribing to the ratio laid down by the Hon’ble High Court in the above mentioned judgement, the Commission concludes that the PIO cannot be directed to furnish the information sought by the appellant, since the police complaint has been filed in the Fatorda Police Station with respect to the missing file.

17. Thus, the present appeal is disposed with the following order:-

- a) The First Appellate Authority (FAA), Deputy Director of Panchayats, South, Margao, Salcete Goa is directed to monitor the inquiry of the police complaint filed by the PIO before the Fatorda Police Station.
- b) PIO is directed to furnish copy of the FIR with respect to the complaint filed vide letter dated 01/12/2022, before the Commission within 10 days from receipt of this order.

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.