

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. 192/2022/SIC

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

-----Appellant

v/s

1. The Public Information Officer,
Office of the Village Panchayat Colva,
Colva, Salcete-Goa.

2. The First Appellate Authority,
Office of the Block Development Officer-I,
Salcete,
Margao-Salcete-Goa 403601.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 22/03/2022
PIO replied on	: Nil
First appeal filed on	: 05/05/2022
First Appellate Authority order passed on	: 14/06/2022
Second appeal received on	: 06/07/2022
Decided on	: 30/01/2023

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 RespondentNo. 1, Public Information Officer (PIO), Office of the Village Panchayat Colva and Respondent No. 2, First Appellate Authority (FAA), Block Development Officer, Salcete-I, Margao –Goa, 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 information on seven points and PIO failed to furnish the information within 30 days. Being aggrieved, he preferred appeal before FAA. PIO during the hearing of first appeal furnished information only on point no. 1 and FAA while disposing the appeal directed the PIO to furnish information on point nos. 2, 3, 4, 5 and 7. However, PIO did not comply with the order, hence the appellant has appeared before the Commission by way of second appeal.
3. The concerned parties were notified, pursuant to the notice, Shri. Nevil B. Furtado appeared on behalf of the appellant under authority letter and insisted for the complete information and

imposition of penalty against PIO for defying the provisions of the Act and disobeying direction of higher authorities. Respondent No. 1, PIO, Shri. Amol Vaman Tilve appeared in person and filed submission on 07/09/2022, reply on 27/09/2022 and reply on affidavit on 18/10/2022. Shri. Pradeep Tamhankar appeared on behalf of FAA and filed reply on 23/11/2022. Appellant appeared in person on 15/12/2022 and filed a submission alongwith a copy for the PIO.

4. PIO stated that, vide reply dated 11/05/2022 he had furnished information on point no. 1 and had informed the appellant that information on point no. 2 to 7 is not traceable in the record inspite of the thorough search. That, he was directed by the FAA to trace and furnish information on point nos. 2, 3, 4, 5 and 7 and that after conducting detail search he once again submitted vide reply dated 12/08/2022 that the information on point nos. 2, 3, 4, 5 and 7 is not traceable in the records of Village Panchayat Colva.
5. PIO further stated that, he requested the appellant to conduct inspection of records, the request was not accepted by the appellant. The said information is very old, belongs to the records of around 1992, hence it took long time to complete the search. That, the PIO sought help of Shri. Arcadia Sacrafamalia in order to search the relevant documents, yet the information could not be traced by him.
6. FAA stated that, he had passed the order dated 14/06/2022 to provide pending information free of cost. That, he has acted as provided by the law and he has no role to be played once the order is passed in the matter.
7. Appellant stated that, during the course of hearing / argument before the Commission the respondent PIO had categorically stated that the Panchayat had not issued any house number to the structure in survey no. 72/3 of Sernabatim Village to any party and therefore the question of furnishing information/ documents at Sr. no. 1 to 7 does not arise and cannot be furnished. Appellant further contended that the Commission had directed the respondent PIO to file an affidavit stating that Village Panchayat Colva has not issued any house number to the said structure in Survey No. 72/3 of village Sernabatim, to any party and therefore the information cannot be furnished. However, the submission dated 18/10/2022 is in the form of reply and not in the form of affidavit specifying the contents as stated above and is not as per the direction of this Commission.

8. Appellant further stated that, the PIO is trying to mislead the Commission and appellant by filing unwanted submissions and wasting time of the authority. In view of this, he requested the Commission to take serious note of the behavior of the PIO and direct the PIO to furnish information on point no. 2 to 7 of the application.
9. Shri. Amol Vaman Tilve, PIO while arguing on 27/09/2022 stated that, he had rigorously searched the records and found only two documents, which were furnished to the appellant. Also, Village Panchayat of Colva has not issued house number to the property referred by the appellant, hence, the question of furnishing information on point nos. 4, 5, 6 and 7 does not arise. Shri. Amol Vaman Tilve further stating that, application of Shri. Joaquim Xavier D'Curz sought at point no. 2 and approved plan by Village Panchayat of Colva, sought by the appellant at point no. 3 are missing and not available in the office, hence cannot be furnished.
10. Appellant argued stating that, information sought by him pertains to the construction licence no. VP/SVCG/Const-2/92-93/92 issued by office of the Village Panchayat of Colva. The said matter being the construction related matter, entire information should be available in one file and the PIO has evaded the disclosure in order to protect the illegalities. By stating this, appellant questioned whether PIO after knowing that the documents are missing from the records, has taken any corrective action or has filed FIR?
11. Upon perusal it is seen that, the appellant vide application dated 22/03/2022 had requested for information on seven points, pertaining to the construction licence no. VP/SVCG/Const-2/92-93/92 issued by Office of Village Panchayat of Colva (SVCG) to Shri. Joaquim Xavier D'Curz from Raia, Salcete for construction of building at Sernabatim village in Survey No. 72/3. Appellant received no response from PIO within the stipulated period and aggrieved by the deemed refusal of the information, filed first appeal on 05/05/2022, wherein PIO was directed by FAA to furnish the information in 10 days. PIO contended before the Commission that vide letter dated 11/05/2022 he had furnished information to the appellant on point no. 1. However, no such letter was placed on record by him. It is seen from the records that during the proceeding of first appeal PIO vide reply dated 12/05/2022 furnished information on point no. 1 before the FAA. Meaning, no information

was furnished during the stipulated period and information on point no. 1 was furnished only after the first appeal was filed.

12. It is noted that, PIO has given different reasons during the arguments and in the reply on affidavit, for not furnishing information on point no. 2 to 7 of the application. During the arguments on 27/09/2022 PIO stated that the Village Panchayat of Colva has not issued house number to the said property, mentioned in the application, therefore question of furnishing information on point no. 4, 5, 6 and 7 does not arise. However, the PIO in his reply on affidavit filed on 18/10/2022 has stated that resolution taken by the Village Panchayat of Colva, issuing house number to the structure is not traceable (information on point no.7) and occupancy certificate granted by the Village Panchayat of Colva is not traceable (information on point no.5). Here, the question is why PIO has not stated in the affidavit that the Village Panchayat of Colva had not issued house number to the said structure. This question is more pertinent since the reply on affidavit was filed after the oral arguments by the PIO upon the direction of the Commission. Such an important statement regarding non issuance of house number, made during the arguments was not included in reply on affidavit, clearly indicates that the PIO has intentionally attempted to create confusion regarding the status of the information, disclosure of which was evaded by him.
13. It becomes clear from the reply on affidavit filed by the PIO that the information on point nos. 2 to 7 existed in the records of Village Panchayat of Colva at some point of time and the same is not traceable now, according to the PIO. Similarly, contention of the PIO made during the arguments that house number to the construction referred by the appellant in the application was not issued by the Village Panchayat of Colva cannot be accepted since the same is not stated in the reply on affidavit. Thus, the PIO has to be held responsible for the non-traceable information which existed in his office at some point of time.
14. PIO has quoted Section 2 (j) of the Act which defines 'right to information' and has taken the said provision to defend his action of not furnishing the information. Section 2 (j) states:-

2. Definitions.- In this Act, unless the context otherwise requires-

(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to_

- (i) inspection of work, documents, records;
- (ii) taking notes extracts or certified copies of documents or records;

- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

PIO should be aware that the information sought by the appellant falls within the definition of 'information' as defined under Section 2 (f) and as provided under Section 2 (j), citizen /appellant has right to seek such information which is held by or under the control of public authority, i.e. Village Panchayat of Colva. The information in question here, existed in the office of PIO at some point of time, hence the same is accessible under the Act and PIO was mandated to trace and furnish the information to the appellant.

15. It is a fact that the PIO cannot be directed to furnish the information if the same is really not traceable. In such a case, the onus to prove that the information is not traceable lies on PIO and he has to come out with clear hands to show that he had undertaken rigorous search and even after all efforts if the information is not traceable, then being the custodian of the records he was required to take appropriate action. The appropriate action could have been informing the superiors or register a police complaint / lodge FIR with respect to the documents not traceable. Here, PIO is guilty of not taking any such action even after knowing that the documents are not traceable in his office, as contented by him.
16. 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 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”.

17. Para 8 of the same Judgment 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”.

18. Subscribing to the ratio laid down in the above mentioned judgment and in the background of the facts of this case, the Commission concludes that it was the responsibility of the PIO to furnish the information sought by the appellant since, he is the custodian of records of his office. In the present matter, PIO has failed to furnish the information and has also failed to take appropriate action on his contention of files being not traceable. The casual and irresponsible approach of the PIO has resulted into non compliance of Section 7 (1) of the Act and for this PIO is held liable for penal action under Section 20 (1) and/ or 20 (2) of the Act. Similarly, PIO is required to carry out search of his records in order to furnish the remaining information and in case unable to trace the information, the status of the relevant documents needs to be enquired.

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

- a) Present PIO, Office of the Village Panchayat Colva is directed to trace and furnish the information on point nos. 2 to 7 sought by the appellant vide application dated 22/03/2022, 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 FAA, Block Development Officer-I, Salcete is directed to undertake appropriate enquiry into the issue of information pertaining to the construction licence no. VP/SVCG/Const-2/92-93/92 issued by Office of Village Panchayat of Colva (SVCG) to Shri. Joaquim Xavier D'Curz from Raia, Salcete for construction of building at Sernabatim village in Survey No. 72/3, being not traceable in the records. The BDO shall complete the enquiry and submit the findings to the Commission within 120 days from today.
- c) Issue show cause notice to Shri. Amol Vaman Tilve, PIO, Village Panchayat Colva 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.
- 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. Amol Vaman Tilve, the then PIO is hereby directed to remain present before the Commission on **28/02/2023 at 10.30** a.m. alongwith the reply to the showcause notice.
- f) The Registry is directed to initiate penalty proceeding against Respondent No. 1, the then 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