

The Complaint is remanded to the FAA.GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 226/2022/SIC

Shri. Suraj J. Behere,
H.No. 41/GL/149, Nr. Govt. High School,
Head Land Sada, Mormugao-Goa.
403804.

-----Appellant

v/s

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

2. First Appellate Authority,
Abhir Hede,
Directorate of Mines & Geology,
Ground Floor, Institute of Menezes Braganza,
Panaji-Goa 403001.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 05/01/2022
Application transferred on	: 10/01/2022
PIO replied on	: 07/04/2022
First appeal filed on	: 02/05/2022
First Appellate Authority order passed on	: 09/06/2022
Second appeal received on	: 22/08/2022
Decided on	: 09/01/2023

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 Respondent No. 1, Public Information Officer (PIO), and Respondent No. 2, First Appellate Authority (FAA) came before the Commission on 22/08/2022.
2. It is the contention of the appellant that vide application dated 05/01/2022 he had sought information on three points from the PIO. He received reply dated 07/04/2022, after the expiry of the stipulated period, with a request to attend PIO's office for inspection of the records. Being aggrieved, he filed first appeal dated 02/05/2022 which was disposed vide order dated 09/06/2022 with directions to PIO to furnish the information available in records within seven days. It is the contention of the appellant that he was

not furnished complete information, hence he approached the Commission by way of second appeal.

3. The concerned parties were notified and the matter was taken up for hearing. Pursuant to the notice, appellant appeared and prayed for the information as well as imposition of penalty on PIO for delay in providing part information and also for not providing correct and complete information. Shri. Premanand Kalshaokar, PIO appeared in person and filed reply dated 23/11/2022 and later, on 07/12/2022 filed reply on affidavit.
4. Appellant stated that, he had sought information pertaining to submission of file in respect of circular 19-2-2004-GAD/part dated 30/03/2012, to Anti Corruption Branch of Directorate of Vigilance, by Directorate of Mines & Geology and certified copy of the said circular alongwith the file submitted. However, PIO failed to respond within the stipulated period and later, during the inspection, relevant documents were not provided. In spite of the directions from the FAA, did not provide correct and complete information.
5. PIO stated that, he had issued reply dated 07/04/2022 to the application of the appellant dated 05/01/2022, requesting him to attend PIO's office and inspect the file to obtain the desired information, and after inspection no specific documents were sought by the appellant. Also that, the PIO has complied with the directions of the FAA.
6. PIO, on 07/12/2022 filed reply on affidavit stating that, the information sought by the appellant with regards to point no. 1 and 3 of the application was not inwards in his office, i.e. Directorate of Mines & Geology, however a note was moved to the Government for consideration in which as per remark of the then Chief Minister file was moved to Anti Corruption Branch and copies of the said note are already furnished to the appellant. In view of this, copies of inward register of the Directorate are submitted to the appellant.
7. Upon careful perusal of the records of this matter it is seen that, the appellant had sought information on three points. First point pertains to the details of file in respect of circular no. 19-2-2004-GAD/part dated 30/03/2012, submitted to Anti Corruption Branch of Directorate of Vigilance, by Directorate of Mines & Geology.

Second point of the application pertains to the reason of submission of the said file to Anti Corruption Branch. Here, the Commission finds that the appellant has asked for a reason behind a

particular decision and the PIO under the Act is not bound to provide reason behind any decision or action of the authority. Hence, the said request under point no. 2 is no information under the Act.

Third point of the application pertains to certified copy of the said circular alongwith the file in respect of the said circular submitted to Anti Corruption Branch.

8. From the above description, it is clear that the information sought on point no. 1 and 3 is eligible as information and the same needs to be furnished to the appellant. Information sought on point no. 2 does not qualify as information, thus PIO is not required to furnish the same. However, regarding information on point no. 1 and 3, PIO on affidavit has stated that with regard to point no. 1 and 3 of the application the relevant documents were not inwards in his office, i.e. Directorate of Mines & Geology, however a note was moved to the Government for consideration in which as per remark of the then Chief Minister, file was moved to Anti Corruption Branch and copies of the said note are already furnished to the appellant. Also, copies of inward register of the Directorate are submitted to the appellant. Since, the statement has been made by the PIO on affidavit, the Commission endorses the stand of the PIO that the said information is not available in his record. Needless to say that in case at any time the statement in the said affidavit are found false, the person swearing it would be liable for action for perjury.
9. 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."

Similarly, appellant vide application dated 20/06/2019 under point no. 3 had requested for information pertaining to date and inward register number of a file submitted to the Government for consideration as per circular 19-2-2004-GAD/part dated 30/03/2012, and PIO of the same authority vide reply dated 15/07/2019 at point no. 3 had stated that "the file was inwards in the office of the Chief Minister, Government of Goa under reference no. 5845-F dated 27/07/2012."

Similarly, PIO of the same authority vide reply dated 14/02/2019 issued with respect to the application dated 12/10/2018 filed by the appellant, had stated that "As instructed by the First

Appellate Authority during hearing on 07/02/2019, the file in respect of circular 19-2-2004-GAD/part dated 30/03/2012 is been called from the Anti Corruption Branch, Directorate of Vigilance, vide letter dated 13/02/2019, which is awaited.”

10. 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 9 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 information sought and furnish to the appellant, in which he has failed.
11. Similarly, records suggests that subject matter of point no. 3 of the application- the said circular alongwith the file submitted to Anti Corruption Branch of Directorate of Vigilance was called from the Anti Corruption Branch of Directorate of Vigilance, by Directorate of Mines & Geology. Hence the information pertaining to point no. 3, at some point of time, has to be available in the records of the PIO and the Commission cannot accept the contention of the PIO that the information on point no. 1 and 3 not inwards in his office.
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 the same is 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 27/12/2021 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

