

GOA STATE INFORMATION COMMISSION

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

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Appeal No. 213/2023/SCIC

Shri. Sushant P. Nagvekar,
H. No. C-312, Fonduvem,
Ribandar-Goa.

----- Appellant

V/s

1. The Public Information Officer,
Shri. A.A. Deshpande,
Town and Country Planning Department,
Panaji-Goa.

2. The First Appellate Authority,
Town and Country Planning Department,
Panaji-Goa.

-----Respondents

Shri. ARAVIND KUMAR H. NAIR - State Chief Information Commissioner, GSIC

Relevant Facts Emerging from the Appeal.

RTI application filed on	- 17-02-2023
PIO replied on	- 13-03-2023
First Appeal filed on	- 23-03-2023
First Appellate order on	- 04-05-2023
Second appeal received on	- 15-06-2023
Decision of the Second Appeal on	- 31-01-2025

Information sought and background of the Appeal

1. Shri. Sushant P. Nagvekar filed an RTI application dated 17/02/2023 to the PIO, TCP, Panaji seeking following information :

- i. *"Kindly arrange to provide me inspection of file Reference 27/15-3/530/TCP/03 and all the connected files pertaining to the subject matter of the said file namely regularisation of alteration to the existing house in plot bearing Chalta No.84,85 and 86 of PT sheet No. 4 of Panaji city at Ribandar by Natty Almeida.*
- ii. *Minutes of meeting of the 86th Conservation Committee meeting held on 19/03/2003 and record of decision taken therein and relevant files connected with those decisions.*
- iii. *Further, kindly arrange to provide me certified copies of documents from the above said files as and if desired."*

2. In response to the RTI application PIO-5 vide letter dated 13/03/2023 replied as under:

"With reference to the information sought at Point No. 1 and 2 of your application, the deemed PIO u/s 5(4) and 5 (5) of RTI Act has informed that search has been carried out in available office records section. However, the concerned file No. 27/15-3/530/TCP/03 and also minutes of the 86th Conservation Committee meeting is not traceable.

In view of the above, the information as sought cannot be made available to you at present. However, the said files are being searched and as soon as they are found out, the information as sought shall be made available."

3. Aggrieved by the reply received from the PIO, RTI applicant filed first appeal dated 23/03/2023 to the First Appellate Authority (Chief Town Planner/Planning) praying the Authority to direct the Respondent PIO to provide information in accordance with the request, free of cost.
4. Perusal of records reveals that following the first appeal filed by the Appellant hearing in the appeal was fixed by the FAA on 18/04/2023 after serving notice dated 30/03/2023 to the Appellant. Respondent was present. Since Appellant was not present, a fresh notice dated 25/04/2023 was issued to the Appellant fixing the hearing in first appeal on 02/05/2023 for which Appellant was present but Respondent PIO was not present as he was on leave.
5. The FAA (Senior Town Planner) vide order dated 04/05/2023 directed the Respondent (PIO-5) to search the documents/files as sought by the Appellant and furnish the same within 15 days of the receipt of the order.
6. Meanwhile, Appellant vide application dated 25/05/2023 to the FAA prayed to call for a compliance report on FAA's order dated 04/05/2023 and also direct the Respondent PIO to comply with the order expeditiously in the interest of letter and spirit of the RTI Act.
7. Pursuant to the FAA's order dated 04/05/2023, Respondent No.1 (PIO-5) vide letter dated 26/05/2023 informed the Appellant that *"subsequent to the order passed by the FAA, undersigned referred the matter again to the concerned staff of TCP Department (HQ), with a direction to conduct the search and put up*

again. Now, today, i.e. 26/05/2023, the undersigned has received the reply that necessary search of all records was conducted but the concerned file No. 27/15-3/530/TCP/03 and also the minutes of 86th meeting of Conservation Committee could not be found. In view of the above, the information, as sought cannot be made available to you at present”.

8. Appellant then preferred second Appeal dated 15/06/2023 before the Hon'ble Commission on the following grounds :

- i. Respondent No. 1 has failed to display the degree of diligence expected from him under the Statute in handling the present application.*
- ii. Reply of the Respondent PIO is mechanical, arbitrary and dehors the diligence expected under the statute, RTI Act.*
- iii. Respondent PIO displayed a manifest lack of sense of duty in accepting the loss of documents and take recourse as called for in the matter of loss of permanent record having legal and financial implications.*
- iv. Respondent No 2 failed not only to enforce its order but failed to ensure compliance of its order.*

9. Appellant in his second appeal prayed for direction to the Respondent No. 1 (PIO) to provide inspection and documents as per RTI application and penal action u/s 20 and 21 of the RTI Act against Respondents for complete lack of diligence and repetitive miscarriage of the administration of the Act and statutory duties cast upon them without any reason.

FACTS EMERGING IN COURSE OF HEARING

10. Pursuant to the second appeal, parties were notified fixing the matter for hearing on 24/07/2023 for which Appellant appeared in person and representative of the PIO appeared. In the subsequent hearing held on 02/08/2023, Appellant appeared in person and PIO Anand Deshpande sought time to file reply.

11. On the next date of hearing, 04/09/2023, Respondent PIO filed his reply along with bunch of documents with a copy to the Appellant. In his reply dated 04/09/2023, Respondent PIO (A. A. Deshpande, Town Planner and PIO-5 in TCP

Department) stated that on receipt of the RTI application of the appellant, same was referred vide letter dated 02/03/2023 to Shri. Francis Rodrigues (Planning Draughtsman, Grade -I, TCP) and Shri. Shrutesh Naik LDC (Records Section TCP). Reply dated 13/03/2023 received from the record section was that *"Search has been carried out in available record section, however the concerned file No. 27/15-3/530/TCP-03 and also minutes of 86th conservation meeting is not available"*. Same was conveyed to the Appellant vide letter dated 16/03/2023.

12. Respondent PIO further stated that as per order dated 04/05/2023 passed by the FAA, the matter was again referred back to the officials viz. Shri. Ramesh Naik, Planning D'Man-II, TCP and Shri. Shrutesh Naik, LDC, Record Section, TCP for further search of the concerned file sought by the Appellant. After thorough search, Shri Shrutesh Naik of Record Section replied(26/05/2023) to the effect that *"The undersigned along with Shri Ramesh Naik, Planning D'Man-II, and Shri M. Morajkar, MTS/Record Section conducted search of all records. However, the concerned file No. 27/15-3/530/TCP/03 and minutes of the meeting of Conservation Committee could not be found"*. Accordingly, this reply was intimated to the Appellant vide letter dated 26/05/2023.

13. According to Respondent PIO, he made another attempt to search the concerned file sought by the Appellant vide letter dated 09/08/2023 addressed to eleven officials in the TCP Department including PIO-1/Superintendent/Adm.Section, PIO-2/Statistical Asstt./Statistical Section, PIO-3/Accountant, Account Section, PIO-4/Town Planner (HQ), PIO-6/Dy. Town Planner/HQ, TCP Board, PIO-7/Dy Town Planner/HQ, Zoning Plan, PA to Chief Town Planner/Adm. etc. Perusal of replies received from the above mentioned officials/PIO, it is found that information sought by the Appellant is not found/available.

14. Respondent PIO further submitted in his reply that subsequently, he had put up a note dated 01/09/2023 to the Chief Town Planner (Land Use)/Link Chief Town Planner (Admn) intimating that despite making rigorous search, file No. 27/15-3/530/TCP/03 and minutes of 86th meeting of the Conservation Committee could not be found in the TCP records and requested to take necessary action.

- 15.**In his written reply dated 09/10/2023 countering the reply dated 04/09/2023 of the Respondent PIO, Appellant stated that the very efforts of the Respondent, now pressed in is merely to wriggle out of rigours of penal action. Appellant further submitted that Respondent No. 2 has not even bothered to reply to the notice amounting to interference in the administration of the Act. Appellant prayed the Commission to issue direction to the Respondent No. 2 to file an action taken to ensure execution of its order dated 04.05.2023 and action taken on an ambiguous document moved by Respondent No.1 dated 01/09/2023.
- 16.**Subsequently vide most urgent letter dated 18/10/2023, Respondent PIO Shri. A.A Deshpande further requested the PIO, North Goa Planning and Development Authority, Panaji, Shri. Ramesh Naik, D'man- Gr-II, TCP Department/HQ, Panaji and Shri. Shrutesh Naik LDC, Record Section, TCP Department/HQ. Panaji to make available the information sought by the Appellant on or before 27/10/2023 as the matter is coming up for hearing before Hon'ble Commission on 30/10/2023. Replying to this letter, Record Section informed (27/10/2023) the Respondent PIO that search has been carried out but concerned file is not traceable.
- 17.**Perusal of records reveals that with reference to the present Appeal No. 213/2023/SCIC before GSIC, Respondent PIO moved a note dated 18/10/2023 to Chief Town Planner (Admn/Planning) inviting attention to the circular issued by the State Law Department vide Ref No. 1/6/2014-LD(Estt)/Part-I/1494 dated 23/09/2020 regarding constitution of revised panel of Government counsels defending the interest of on behalf of the State of Goa before the District and Sessions Courts, all its subordinate Courts and other Quasi Judicial Authorities. In this note, Respondent PIO suggested to appoint Adv. Harsha Naik as the matter needs to be defended in the Court.
- 18.**In continuation to his note to Chief Town Planner/Admn. dated 01/09/2023 regarding missing of file No. 27/15-3/530/TCO/03 and minutes of 86th meeting of the Conservation Committee, Respondent PIO placed another letter dated 23/10/2023 to the Chief Town Planner/Admn.,narrating the entire details including search carried out on multiple occasions to trace the said missing file and requesting to take necessary action.

- 19.** During the hearing on 30/10/2023, Appellant and Respondent PIO appeared in person. Respondent PIO placed on record the letter dated 23/10/2023, office notes dated 10/10/2023 and 18/10/2023 and the same furnished to the Appellant, who insisted for the reply of the FAA. Accordingly, notice was issued to the FAA.
- 20.** During the hearing on 27/11/2023, Respondent PIO appeared along with Adv. Harsha Naik placed on record the copy of the Order from the Department of Law and Judiciary and Representative of FAA, Shri Anup Malik filed reply of FAA.
- 21.** Respondent No. 2 (FAA) in her say dated 27/11/2023 submitted that the FAA decided the first appeal of the Appellant in accordance with the provisions of the RTI Act 2005 and there is no illegality in the said order. Since the Respondent No. 1 submitted that the file and information sought by the Appellant is not traceable in the office records of the Department, Respondent No. 2 has directed the Respondent No. 1 to search the file and provide information to the Appellant. Respondent No. 2 further submitted that Respondent No. 2 has not rejected the appeal filed by the Appellant and therefore the order passed by the Respondent No.2 is valid and reasonable.
- 22.** The copy of the order dated 13/11/2023 issued by the Under Secretary/Estt. Law Department states that Adv. Harsha Naik has been entrusted to appear for Respondent No.1 (PIO, TCP) and Respondent No.2 (FAA, TCP) in the Appeal No. 213/2023/SCIC before the GSIC.
- 23.** On 11/01/2024, both Appellant and Respondent PIO appeared in person. Respondent PIO Shri. A.A. Deshpande filed his Affidavit dated 09/01/2024 placing on record the efforts made by him to search the files in order to make available to the Appellant the information as sought by him. The affidavit also contains the request dated 20/11/2023 placed before the Chief Town Planner/Admn, TCP by the Respondent PIO for compliance of Section 4 of the RTI Act 2005. Respondent PIO in his request for compliance of Section 4 of the RTI Act 2005, submitted before the Chief Town Planner/Admn that as per Section 4 of the RTI Act 2005, every Public Authority has to maintain all its records duly catalogued and indexed in a manner and the form, which facilitated

the Right to information under RTI Act 2005. Public Authority also has to publish relevant information as specified in Section 4 (1-b) and 4(1-c) of the Act. Respondent PIO Shri. A.A. Deshpande has requested the Chief Town Planner to issue necessary direction to all the concerned for compliance of Section 4 of the RTI Act 2005.

- 24.** The Appellant vide application dated 08/02/2024 challenged the legal validity of the order No. 02/75/2023/LD-Est/2037 dated 13/11/2023 issued by the Under Secretary, Department of Law, Government of Goa appointing single Advocate (Adv. Harsha Naik) to represent both the PIO and the FAA. Appellant prayed before the Commission to treat the above said order dated 13/11/2023 as null in the true spirit of Judicial discipline and Article 141 of the Constitution of India. Appellant also prayed to allow impleading of the Head of the public authority as a party to the present appeal since there is apparent efforts of the Head of the public authority to defend abdicate statutory obligation under Section 4 terming it as the interest of the State/department.
- 25.** There was no hearing in the matter from March 2024 to September 2024 as the post of SCIC and SIC remained vacant during this period.
- 26.** When the matter took up for hearing before the SCIC on 12/11/2024, Appellant and Respondent remained absent and the Commission served notice to both the parties for their presence for the next hearing scheduled on 29/11/2024.
- 27.** Appellant as well as Respondent PIO appeared in person on 29/11/2024 and Respondent PIO submitted that the concerned file pertaining to the information sought by the Appellant is not traceable. Commission directed the PIO to file latest status of the matter and effort made to trace the file within 10 days fixing the matter for further hearing on 02/01/2025.
- 28.** As directed by the Commission, Respondent PIO filed status report dated 06/12/2024 in which Respondent PIO submitted that vide his letter dated 29/11/2024, he has requested the Chief Town Planner/Admn to inform the status of the earlier letter dated 23/10/2023 submitted to the Chief Town Planner regarding missing file No. 27/15-3/530/TCP/03 and minutes of 86th meeting of the Conservation Committee sought by the Appellant vide RTI application dated

17/02/2023. Since he is awaiting the reply of ChiefTown Planner, Respondent PIO submitted that longer date be given.

29. During the hearing on 02/01/2025, Respondent PIO appeared along with Adv. Harsha Naik and placed on record the copy of the complaint dated 02/01/2025 filed before Panaji Police Station as regards the missing file No. 27/15-3/530/TCP/03 and minutes of 86th Meeting of the Conservation Committee. The complaint to the Panaji Police also contains a chronological report on the subject starting from the receipt of the RTI application dated 17/02/2023 filed by the Appellant to the letter submitted by the Respondent PIO to the Chief Town Planner/Admn. requesting necessary action into the missing of file No. 27/15-3/530/TCP/03 and minutes of 86th meeting of Conservation Committee.

30. When the matter was taken up for hearing on 21/01/2025, Appellant filed a written submission dated 21/01/2025 stating that the appointment of a single advocate to represent the Respondent No.1 and 2 by the Department of Law is contrary to the very scheme of the RTI Act and hence lacks the force and recognition of law.

31. Other points raised by the Appellant in his written submission dated 21/01/2025 are as follows :

- i. In the present appeal, the issue pertains to loss of documents of permanent nature as well as having evidentiary value but there has not been any department enquiry on the issue till date.*
- ii. Appellant raised preliminary objection for the appearance of Government advocate for Respondent PIO in the present appeal.*
- iii. The police complaint dated 01/01/2025 regarding missing of file No.27/15-3/530/TCP/03 and minutes of 86th Meeting of the Conservation Committee does not convey from where and how the record was lost and the responsible for the custody of the records.*
- iv. Since the said complaint to the police does not bring forth any cognizable offence nor does name any suspects, complaint does not call for any action on the part of police and does not serve any purpose.*
- v. Referring of the issue by Respondent No.1 to the senior officers including Respondent No.2 have gone unheard showing complete disregard to the provisions of the RTI Act within the public authority.*

- vi. The tone and tenor of the reply filed by the Respondent No.2 only convey a tendency of washing off hands and passing the buck to Respondent No.1 rather than shouldering administrative responsibility and accountability for the missing record.*
- vii. RTI Act mandated that the information should either be given or denied in accordance with Section 7(1) of the Act and there is no third option available under the Act.*
- viii. Matter calls for issuance of notice invoking Section 20 and 21 of the Act.*
- ix. Appellant submitted a copy of the circular dated July 22, 2011 issued by Shri. Menino Peres, Director of Information and Publicity and Ex Officio, Joint Secretary to the Government to all HOD's and Heads of Public Sector Undertakings, with copy to GSIC, Chief Secretary, Goa and Secretary/Law Goa stating that any request to provide Advocate from the Government penal would not be entertained unless the point of law is involved.*

32. In order to counter the reply of the Respondent PIO dated 02/02/2025, Appellant in his written reply dated 29/01/2025 stated that reply of Respondent PIO 14/08/2023 amounts to admission of non-compliance to Section 4 of the Act and probable destruction of records. Appellant further stated that the matter calls for an inquiry which the Hon'ble Commission be pleased to order vide powers under 19(8) of the Act as laid down in the Apex Court Judgement in ***Union of India V/s. Vishwas Bhamburkar (WPCC) 3660/2012***).

33. Respondents filed a para wise reply dated 31/01/2025 to the written submission dated 21/01/2025 of the Appellant. With regard to appointment of Adv. Harsha Naik to represent Respondent No.1 and 2 in the present appeal decision was made by the Department of Law and Judiciary vide order dated 13/11/2023 but the fact is that in this case Adv. Harsha Naik appearing and arguing only on behalf of Respondent No.1. Moreover, Hon'ble Commission lacks jurisdiction to decide on the issue of appointment of advocate as the same pertains to Government/Law Department.

Commission's Observation

- (i) Appellant vide application dated 17/02/2023 sought two documents viz. File No. 27/5-3/530/TCP/03 and Minutes of Meeting of 86th Conservation Committee held on 19/03/2002 but both the documents found untraceable by the Office of the Respondent PIO, particularly Record Section.
- (ii) Perusal of records indicates that Respondent PIO on his part did all effort to trace the information sought by the Appellant by transferring the application to all PIOs/Sections within the Public Authority (Town & Country Planning Department), multiple searches in the Record Section as well as Planning Section and apprising the matter (missing of documents of the year 2009) to Chief Town Planner/Admn. vide note dated 01/09/2023 and 20/11/2023.
- (iii) Despite bringing the matter of the missing of file and minutes of the 86th Conservation Committee Meeting to the notice of Chief Town Planner/Admn. by the Respondent PIO with request to take necessary action, no action has been noticed on the part of CTP/Adm.
- (iv) Implementation of the provisions of the Right to Information Act, 2005 and the dissemination of the information to the information seekers is not an exclusive responsibility of the PIO, on the contrary it is the collective responsibility of APIOs, PIO, First Appellate Authority and Head of the Public Authority.
- (v) Record management of the Public Authority in the present Appeal (TCP Department) appears to be NIL or poor.
- (vi) Appellant has objected the appearance of single Government Advocate for Respondent No. 1 & 2 of the Appeal claiming conflict of interest.
- (vii) Commission allowed Adv. Harsha Naik to appear and argue in the matter because the said Advocate appeared on behalf of Respondent No. 1 only in the present appeal. Moreover the present Commission no longer warrants the presence of FAA in the proceedings.
- (viii) Since the RTI Act 2005 is widely considered as one of the most progressive piece of Legislation in India, empowering citizens by promoting transparency and accountability in Government operations,

Commission is of the opinion that Appellant and Respondent are capable enough to present their matters and argue on it effectively. BUT the Government and the Department of Law are the authorities to decide on whether service of the advocates on Government expense is required by the Respondent PIO or FAA of public authorities.

- (ix) Since day to day functioning of the Public Authorities like TCP Department is directly related to the common citizen, priority should be given to ensure proper record management system by way of proper cataloguing and indexing of all records/data of the public authority on a priority basis to discharge the obligations of public authorities envisaged under Section 4 of the RTI Act, 2005.

DECISION

Considering the above said facts & circumstances, submissions as well as arguments placed by the Appellant and Respondent PIO, perusal of material available before the Commission and its observations, Commission hereby disposed off the present appeal today i.e. 31/01/2025 with the following directions:

I. Directions to the H.O.D of the Public Authority (TCP Department)

Under section 19(8) of the RTI Act, 2005 Commission directs the Head of Town & Country Planning Department to institute an impartial and effective inquiry by H.O.D himself into the issue of the missing of File No. 27/5-3/530/TCP/03 and minutes of 86th meeting off Conservation Committee held on 19/03/2003, fix the responsibility for the loss of the record and take appropriate departmental action under Service Rules applicable against the Officer/Officers responsible for the missing/loss of records.

The Inquiry Report should send to the Commission and the Appellant within 30 days from the receipt of this order.

The inquiry should be completed within 20 days from the receipt of this order.

II. Directions to the Chief Town Planner/Admn. (TCP Department)

Submission by the Respondent PIO and the perusal of material available with the Commission reveals that the Respondent PIO vide letter dated 23/10/2023 and 23/11/2024 intimated the Chief Town Planner/Admn. TCP Department regarding missing File No. 27/15-3/530/TCP/03 and minutes of 86th meeting of the Conservation Committee held on 19/03/2003 and requesting the Chief Town Planner/Admn. to do the needful at the earliest.

Since no action has been initiated on these two letters /application still date, Chief Town Planner/Admn. is hereby directed to file an Affidavit with regard to the action initiated by him in the issue of missing of the above said file/record and if no action is initiated, reasons for not initiating any action despite bringing the matter into notice by the Respondent PIO.

This casual, negligent and irresponsible approach on the part of Chief Town Planner/Admn. is a clear indication that Respondent PIO has not been getting desired support from the public Authority to effectively discharge his duties as PIO of the Public Authority, TCP Department.

Even though the Respondent PIO failed to furnish the information sought by the Appellant, efforts being made by the PIO, to trace the missing files/document with the intention to provide the same to the Appellant cannot be undermined. Hence Commission is not in favour of imposing penalty on him.

Chief Secretary & Secretary (Law)

With regards to the appointment of Government Advocates to represent the Respondent PIOs and FAAs of Public Authorities, considering the objection raised by the Appellant in the present appeal and Appellants/Complainants in some other appeals/complaints before this authority, Commission is of the firm opinion that State Government, particularly, Chief Secretary and Department of Law & Judiciary, are the appropriate authorities to decide on this issue, which frequently raking up before this Commission by the Appellants/Complainants.

In this regards, an early feedback/action is solicited.

With the above directions, Second Appeal No. 213/2023/SCIC stands disposed.

- Proceedings stands closed.
- Pronounced in Open Court.
- Notify the parties.

Sd/-

(Aravind Kumar H.Nair)

State Chief Information Commissioner, GSIC

Copy to:

- 1) The Chief Secretary, Government of Goa, Secretariat, Porvorim, Goa
- 2) The Secretary (Law), Government of Goa, Secretariat, Porvorim, Goa
- 3) Shri Rajesh Naik, Chief Town Planner (Planning)/H.O.D, Town & Country Planning Department, 2nd floor, Dempo Towers, Patto Plaza, Panaji Goa..... for information and necessary action.
- 4) Ms. Vertika Dagur, Senior Town Planner (Admin.)/F.A.A (North-Goa), Town & Country Planning Department, 2nd floor, Dempo Towers, Patto Plaza, Panaji Goa..... for information and necessary action.