

**GOA STATE INFORMATION COMMISSION**

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

**Appeal No. 122/2023/SIC**

Mr. Prashant Atmaram Harmalkar,  
H.No. 8/55/E, Mauswada,  
Pernem-Goa 403512.

-----Appellant

**v/s**

1. Public Information Officer,  
Mamlatdar, Tiswadi,  
Panaji-Goa 403001.

2. First Appellate Authority,  
Mamlatdar, Tiswadi,  
Panaji-Goa 403001.

-----Respondents

**Relevant dates emerging from appeal:**

RTI application filed on	: 27/07/2022
PIO replied on	: 06/09/2022
First appeal filed on	: 30/09/2022
First Appellate Authority order passed on	: 02/01/2023
Second appeal received on	: 04/04/2023
Decided on	: 15/01/2024

**ORDER**

1. The appellant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), had sought from Respondent No. 1, Public Information Officer (PIO) following information:-

*"Please give me entire mutation Registration records including all the documents and pages that is present in the files of*

*1. Mutation Registration No. 20735 of Taluka Tiswadi with respect to Survey No. 27/3, of Village Calapur, Tiswadi Taluka, Goa.*

*AND*

*2. Mutation Registration No. 20736 of Taluka Tiswadi with respect of Survey No. 27/4, of Village Calapur, Tiswadi Taluka, Goa".*

2. Respondent PIO, vide reply dated 06/09/2022, conveyed to the appellant that, "the information sought by you is not traceable in storage room, efforts are made to locate the file, once the file is located we may inform you accordingly".

3. Being aggrieved by the reply of the PIO, appellant filed first appeal before Respondent No. 2, First Appellate Authority (FAA). The FAA, while disposing the appeal, directed PIO to furnish the information by conducting search again, within 30 days.
4. It is the contention of the appellant that the PIO, vide letter dated 24/01/2023, informed him that the search is going on and the inventory of all disposed / pending mutation files of Tiswadi Taluka is not completed and once the file is located, the appellant will be informed accordingly. The appellant further contends that, after waiting for a long time, he did not receive the information, thus, decided to approach the Commission by way of the second appeal.
5. Notice was issued to the concerned parties, pursuant to which, appellant appeared in person and filed submission on 17/05/2023 and 05/01/2024. Smt. Anusha Gaonkar, PIO appeared in person and later through the APIO under authority, filed reply dated 12/06/2023, 26/06/2023, 18/12/2023 and 05/01/2024. Shri. K. B. Dessai, FAA appeared in person on 05/09/2023 and 05/01/2024.
6. PIO stated that, she had taken all possible efforts in order to search the relevant mutation files sought by the appellant, during the stipulated period of the application and after the disposal of the first appeal, as well as during the present appeal proceeding. She herself alongwith the dealing hand and other staff searched the records rigorously, issued memorandum to the concerned Talathi. However, inspite of all these efforts, she could not trace the relevant files.
7. PIO further stated that, the said matter of missing files was reported to the Mamlatdar of Tiswadi (FAA in the present matter) wherein, FAA wrote to the Police Inspector of Panaji Police Station, requesting to register missing report. Also, the details sought by the Police Inspector have been provided vide letter dated 28/12/2023. Hence, the said matter is under police investigation and the PIO is unable to furnish the information.
8. Appellant while arguing for the information, stated that, the information requested should be part of the records of the PIO, hence, as per the direction of the FAA, the PIO was required to furnish the information. Appellant, relying on order dated 19/01/2017, passed by the Goa State Information Commission in Shri. Sandeep H. Konadkar v/s Public Information Officer, Deputy Collector, Pernem and First Appellate Authority, Additional Collector, North Goa District, stated that the PIO upon knowing that the files

are missing, was required to initiate appropriate action. 'Missing file' is not an exemption prescribed by the Act.

9. Appellant, while relying on order dated 29/08/2014, delivered by the Central Information Commission in Shri. Om Prakash v/s Land & Building Department, GNCTD, Delhi further argued for relief in the form of the desired information or appropriate action by the public authority and reconstruction of alternative file.
10. Shri. K. B. Dessai, FAA submitted that, upon being informed by the PIO regarding the missing files, he had requested the Police Inspector of Panaji Police Station to register missing report. Accordingly, missing report has been registered and his office have provided necessary details to the investigating officer.
11. The Commission has perused the records of the present matter and heard both the sides. Upon careful perusal, it is seen that, the appellant is primarily aggrieved since he has not received any information from the PIO. On the other hand, it is the case of the PIO that although she was not able to furnish the information, she had never denied the information and has made all possible efforts to search the missing files, yet she could not locate the file in her office.
12. Here, the Commission notes that, the information sought by the appellant, i.e. records of mutation files, were disposed in the year 2007 and 2010. Appellant sought the said information vide application dated 27/07/2022. The said records are required to be readily available in the custody/ office of the PIO. However, it is observed that the PIO, upon receipt of the application, realised that the said files are not traceable, hence, issued reply to the appellant stating that the concerned files are not available, as reported by the dealing hand of Mutation cell. Later, upon direction of the FAA, the PIO undertook another search, yet the files were not found. After notifying the matter to the Mamlatdar/ FAA, memorandum was issued to the concerned Talathi to trace the files. The said Talathi after carrying out search, reported that the files are not found. This being the case, the Mamlatdar/ FAA, vide memorandum dated 15/11/2022, directed the Head Clerk and all concerned Talathis /officials to make inventory of all disposed files of Mutation cell.
13. Further, upon completion of inventory, the authority realised that the said files were still not traceable, meaning not available in the records of the PIO. Thus, upon request of the PIO, the Mamlatdar/ FAA, vide letter dated 07/12/2023, requested the Police Inspector of

Panaji Police Station to register missing report into the said matter. Subsequently, Shri. Sanket S. Pokhare, PSI, Panaji Police Station sought some details which were furnished vide letter dated 28/12/2023, by the FAA. Thus, it appears that the matter of missing files sought by the appellant is being investigated by Panaji Police.

14. Since it is a fact that the information sought by the appellant is not available in the office /custody of the PIO, the same cannot be furnished. The Panaji Police are required to complete the investigation and the concerned authorities are required to take appropriate action into the said matter. Since the matter is under investigation, no relief pertaining to furnishing of information can be granted to the appellant, at this stage.
15. Nevertheless, the fact that the Public Authority in the present matter has failed to maintain and protect the records, cannot be neglected and, has to be viewed seriously. Unless proved that records were destroyed as per the prescribed rules of destruction / retention policy, it is deemed that the records continue to be held by public authority. However, in the present matter, the public authority including PIO and FAA have initiated action by registering a missing report, and investigation by Panaji Police is in process, and no conclusion can be drawn till the investigation is completed.
16. Ideally, the information which was available at some point of time, in the records of the PIO, has to be available later at any point and the said information has to be furnished to the applicant, unless the same is exempted under Section 8 (1) or rejected under Section 9 of the Act.
17. In the present matter, it appears that, non-traceability of the information is attributed to non-availability of an officer as Records Officer. The public authority has a duty to designate Public Records Officer as per Public Records Act, 1993. This Act is enacted to regulate the management, administration and preservation of public records of Government departments and all establishments under the umbrella of the Government. Here in the present matter, it seems that the unavailability of Public Records Officer has paved way for missing of some files from the Mamlatdar office, and the appellant in search of information, is made to suffer.
18. Similarly, it is found that, the public authority had not maintained updated inventory of all disposed files of Mutation cell. The unavailability of updated inventory of the records has ultimately

deprived the appellant from his statutory right of getting the desired information.

19. 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 6 :

*"6. 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".*

20. Para 7 of the same Judgment reads –

*"7. 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".*

21. In the background of the facts and findings of the Commission, as well as subscribing to the ratio laid down by the Hon'ble High Court of Delhi, the Commission arrives at following conclusions:

- a) Non traceability or missing of files cannot be treated as exemption from disclosure of the information. Appropriate action has to be initiated by the PIO and the public authority in the case of missing of any document.
- b) PIO and FAA of the public authority in the present matter have already initiated appropriate action by requesting Panaji Police to investigate into the matter.
- c) Public authority is required to undertake departmental inquiry into the issue of missing of the concerned files from the records of the PIO. Though the missing report has been registered, Police may not look into the aspect of tracing the missing files unless there is a theft of the files.
- d) Public authority is required to take appropriate action against the persons / officers found guilty for missing of the records, upon completion of enquiry /investigation.
- e) Designation of officer as Public Records Officer in the Mamlatdar office as well as every public authority is mandatory.
- f) It is the responsibility of the public authority to maintain updated inventory of records.

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

- a) The FAA, Mamlatdar of Tiswadi is directed to undertake enquiry into the issue of missing of files sought by the appellant vide application dated 27/07/2022. The said enquiry shall be completed and report to be submitted to the Commission within 120 days from receipt of this order.
- b) PIO and FAA shall explore possibility of reconstruction of alternative files, with respect to the information sought by the

appellant and inform the appellant accordingly, within 30 days from receipt of this order.

- c) The Chief Secretary, Government of Goa shall issue direction to all public authorities under the control of Government of Goa to designate an officer as Public Records Officer, responsible for maintenance and preservation of records in the respective public authority. The Registry is directed to send copy of this order to the Chief Secretary, Government of Goa.

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.