

**GOA STATE INFORMATION COMMISSION**

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

**Appeal No. 192/2023/SIC**

Anil B. Kambli,  
R/o. H.No. 63, Ward No. 7,  
Chimbel-Goa 403006.

-----Appellant

**v/s**

1. Durga Kinlekar,  
Dy. Collector (Revenue)/ PIO,  
North Goa District,  
Panaji-Goa 403001.

2. Kedar A. Naik,  
Additional Collector- II,  
First Appellate Authority,  
North Goa District,  
Panaji-Goa 403001.

-----Respondents

**Relevant dates emerging from appeal:**

RTI application filed on	: 10/11/2022
PIO replied on	: 22/11/2022
First appeal filed on	: 13/12/2022
First Appellate Authority order passed on	: 06/04/2023
Second appeal received on	: 06/06/2023
Decided on	: 01/02/2024

**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) information as follows:-

*"Please find enclosed herewith a copy of sanad schedule II issued vide No. RB/CNV/725/80 dated 26/03/1981 by collector of Goa. I am to request you to issue me a certified copy of above sanad schedule II dated 26/03/1981 after payment of fees as required".*

2. Respondent PIO, vide reply dated 22/11/2022, conveyed to the appellant that, "it is to inform you that the information sought by you is not available with this office records as the information is of the year 1981".
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 thorough search again, within three weeks and in case the information is still not available, then file a First Information Report (FIR) stating that the concerned file is missing.

4. It is the contention of the appellant that vide letter dated 09/05/2023, he requested PIO to furnish the information as directed by the FAA. 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 second appeal.
5. Notice was issued to the concerned parties, pursuant to which, appellant appeared in person and filed submission on 23/10/2023. Smt. Vrushika Kauthankar, present PIO appeared in person and on 07/09/2023 filed reply. Affidavit dated 16/01/2024 sworn and signed by the PIO was received in the entry registry on 17/01/2024.
6. PIO stated that, she and her office staff had made multiple efforts to search the concerned file during the stipulated period of the application, as well after disposal of the first appeal. Another search was undertaken during the present appeal proceeding. Since the file was not traceable, as directed by the FAA, APIO requested Police Inspector of Panaji Police Station to register FIR concerning the untraceable Conversion File bearing no. RB/CNV/725/80, dated 26/03/1981. Accordingly, Missing Article Report No. 1671/2023 dated 23/06/2023 was registered. PIO further stated that, in the absence of the said file, her office is not able to furnish the information sought by the appellant.
7. 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 further stated that, the PIO is required to give explanation on why the concerned file is not traceable in her office and if the relevant records are destroyed/weeded out, then give evidence of such an action. Appellant prayed for the desired information or appropriate action by the Public Authority and reconstruction of alternative file.
8. 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 not intentionally denied the information and has made all possible

efforts to search the missing file, yet she could not locate the file in her office.

9. Here, the Commission notes that the information sought by the appellant, i.e. certified copy of Sanad schedule II issued vide No. RB/CNV/725/80, dated 26/03/1981 was originally issued by the Collector of Goa in the year 1981. Though the said information was in the office of the then Collector of Goa and the same is more than 40 years old, the said information is ought to have been available in the records and it was the duty of the PIO to search and furnish the same to the appellant.
10. However, it is observed that, Smt. Durga Kinlekar, the then PIO and Smt. Vrushika Kauthankar, the present PIO searched for the said file at various stages. Later, upon the direction of the FAA, action was initiated and Missing Article Report was registered in the Panaji Police Station. Thus, it appears that the matter of the said missing file, sought by the appellant, is being investigated by Panaji Police.
11. During the present proceeding, the Commission directed the PIO to provide inspection to the appellant and undertake yet another search to trace the said file and file reply on affidavit with respect to the status of information. Accordingly, inspection was provided to the appellant and search was undertaken, yet the said file was not found. Further, PIO, vide an affidavit, stated that, all possible efforts have been undertaken to trace the information sought by the appellant and despite diligent efforts, the concerned file remains untraceable .
12. 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.
13. 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.

14. 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.
15. 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 PIO's office, and the appellant in search of information, is made to suffer.
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 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”.*

17. 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”.*

18. 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 every Public Authority is mandatory.
19. In the light of above discussion, the present appeal is disposed with the following order:-
- a) The FAA, Additional Collector- II, North Goa District, Panaji Goa is directed to undertake enquiry into the issue of missing of file sought by the appellant vide application dated 10/11/2022. 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 file, 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.

