

# GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

**CORAM: Shri Prashant S.P. Tendolkar,  
Chief Information Commissioner.  
Smt. Pratima K. Vernekar,  
State Information Commissioner.**

## Complaint No.25/SIC/2014/

Wilfred M. Desouza,  
2111, Baga Road,  
Calangute Bardez, Goa-403516 .....Complainant  
V/s.

1. State Public Information  
Officer,  
Shri Sagar Chandra Rai,  
Captain of Ports, Govt. of Goa,  
Panaji-Goa
2. The First Appellate Authority,  
Shri James Braganza,  
Captain of Ports, Govt. of Goa, .....Opponent/Respondents  
Panaji-Goa

**Filed on: 02/07/2014**

**Disposed on: 15/07/2016**

### **1. FACTS**

- a) By an application dated 20/03/2014 Complainant, Shri Wilfred M' Desouza had requested there in for inspection of files pertaining to a) Agnelo J. Fernandes, b) M/s. Marine Solutions and M/s. Marina India c) Wilfred M. Desouza and M/s. Aleixo Resorts and Properties Pvt. Ltd, from Opponent No. 1, PIO, Captain of Ports, Panjim-Goa.
- b) The Opponent No. 1, PIO by his letter dated 16/04/2014 intimated the present Complainant to inspect the files on any working day with prior appointment. Inspection of the files relating to Shri Agnelo J. Fernandes and Shri Wilfred M. D'Souza was given to Complainant on 16/05/2014 and the 3<sup>rd</sup> file relating to M/s. Marine Solution and M/s. Marine India was then with Govt. and was not in the possession of their department as

such inspection of the same could not be given to him.

- c) Being aggrieved by the action of Opponent No. 1, PIO and as he felt that incomplete information was provided to him, he filed 1<sup>st</sup> Appeal before Captain of Ports Department, Panjim being FAA (First Appellate Authority) on 21/04/2014 which was registered as Appeal 06/2014, which was disposed by FAA by their Order dated 30/05/2014. Another appeal was also again filed by the Appellant concerning the same subject matter on 16/05/2014 which came to be registered as Appeal No. 7 of 14 which was also disposed by Opponent No. 2, FAA on 1/07/2014 by directing the Opponent No. 1-PIO to review the matter and furnish the required information if any to the Complainant for one such file which is with the Government whenever it comes back to the Captain of Ports Office.
- d) According to Complainant since the information was not furnished to him pertaining to the third file and being aggrieved by such refusal the Complainant has filed the present Complaint u/s 18 of RTI (Right to Information) Act to this Commission. In the present Complaint besides the other reliefs the Complainant has sought direction to furnish the information as sought for by him by his application u/s 6 of RTI Act and also reliefs u/s 20 (1) and 20 (2) of RTI Act.
- e) Notices were duly served on both the parties. In pursuant to the notice both the Opponents appeared and filed their respective says. The Complainant despite of due service opted to remain absent.

- f) The Arguments were advanced by both the Opponents. We have considered the arguments advanced by Opponents and also all the records available in the file.

## **2. FINDINGS**

- a) It is case of the Complainant as against Opponent No. 1, PIO that the vague reply was filed by them and that they provided incomplete and cocoted reply to safeguard the corrupt activities. He also claimed that there was delay in filing reply and it was filed after 40 days Opponent No. 1-PIO failed to give inspection to point No. B. Further it was also the grievance of the Complainant that SPIO, with distorted mind-set, created information which is evidence of corrupt activities and also further raised issue of charging him fees for information.
- b) It is also grievance of the Complainant as against Opponent No. 2, FAA that even after hearing the arguments and perusing the records in the Appeal he did not respond or pronounce any order and the matter was stretched for 45 days and that Opponent No. 2 ,FAA did not decide appeal within prescribed time frame.
- c) In the present Complaint beside other penalty relief the Complainant also sought direction for information.
- d) The Opponent No. 1 during arguments submitted that upon the receipt of the said application, the PIO as per section 5(4) of the RTI Act 2005 vide their Office note No. A-11060/749 dated 21/03/2014, directed concerned dealing hand to make available requisite information within the period of 20 days. The Respondent No. 1 further submitted that they have duly responded to the application of the Complainant within time

specified under RTI Act and vide their Office letter bearing No. A/11060/749/1195/dated 16/04/2014 had sent intimation letter for inspection of files required by the Applicant. It was further submitted by Opponent No. 1, PIO that Complainant instead of taking inspection of files waited for mandatory period of 30 days to get expired and did not make himself available for inspection when offered and with ulterior motive filed two Appeals u(s) 19(1) before the FAA on pretext that no information furnished to him. It was further submitted by the Opponent No. 1 that the applicant has conducted inspection on 16/05/2014 of two files relating to Agnelo Fernandes & Wilfred D'Souza and the acknowledgment to that effect have been given by the Complainant himself. He further submitted that on the same day the Complainant also applied for certified copies of the two files. The Opponent No. 1 has supported their arguments with the documents which were annexed to the reply. Vide their reply also they have given genuine reason for not making available the 3<sup>rd</sup> file for inspection.

- e) On behalf of Opponent No. 2-FAA it was submitted that both the Appeals were disposed within time frame by them and that Complainant was present for the hearing of Appeal No. 7/14 and the said Appeal was disposed on the same day after hearing both the parties. They have also placed on record the order dated 30/05/2014 and 1/07/2014 passed by Opponent No. 2-FAA. On perusal of said order dated 1/07/2014 it clearly reveals that the matter came up for hearing on 1/07 2014 and the Appellant as well as Respondent were present during the hearing. From the said order it could be gathered that the Order was passed on the same day of hearing in the presence of the Appellant/present Complainant and such he was aware of the same.

- f) The Complainant had made certain allegations against both the Opponents, having alleged so it was incumbent upon him to prove the said allegations.
- g) On scrutiny of the file it is seen that no affidavit-in-evidence was filed by the Complainant neither he has subjected himself for cross examination. Nor his Complaint is supported with any supporting document to substantiate his contention/allegation. The Complainant had also not placed on record his RTI application. On the contrary the Opponent have filed their replies alongwith the supporting documents countering the submissions of the Complainant in support of their bonafides.
- h) Both the Opponents relied upon in support of their contention RTI application dated 20/03/2014 (Exh. A), Office note dated 21/03/2014 (Exh. 'B') their reply dated 16/04/2014 to the Complainant (Exh. C) the Office Note dated 16/05/2014 regarding the inspection of two files (Exh. D), the Application to PIO under RTI Act dated 16/05/2014 filed by the Complainant for certified copies of the documents pertaining to files after the inspection of 2 files (Exh. E). The orders passed by the FAA dated 30/05/2014 and 01/07/2014 at (exhibit F & G).
- i) During hearing on 8/06/2016 before this Commission Opponent No. 1 also place on record their letter, dated 11/04/2016 address to the Complainant intimating him to inspect the 3<sup>rd</sup> files and submitted that Complainant has not responded to their letter.
- j) Proving certain facts raised/alleged by Complainant always rests on him. Under no circumstances burden shifts on the opposite

party. In other words the onus is on the Complainant to prove that information furnished to him was incomplete and incorrect and that they have provided such information to safeguard malpractices happening in their department. He has also claimed that Opponent No. 1 had claimed fees from him, however in support of said statement, he ought to have relied upon copy of the receipt. This was necessary as Opponent No. 1 have claimed that no fees were charged by them for providing inspection of files. By continuous absence of the Complainant and failure to produce any evidence, the Complainant has miserably failed to discharge his burden. The interest of justice also demands that the Opponent ought to be afforded opportunity to cross examine the Complainant in order to rebutt the evidence. In present case, Complainant did not avail himself for cross examination. It also appears that Complainant is not interested in the present proceedings and as such he did not make himself available before this Commission to substantiate his case. In absence of any such proof the allegations made as there in, cannot be held that the wrong and incorrect information was intentionally and deliberately provided to him.

- k) In the above circumstances the Commission holds that the Complainant has failed to discharge the onus. The Opponents have shown their bonafides by way of documentary evidence in providing the information. Hence adverse inference emerges against the case of the Complainant that the information furnished to the Complainant was correct and that there was no deliberate delay and no malafide intention on providing incomplete and incorrect information. We are constrained to dismiss the present Complaint and consequently we dispose the present proceedings, with order as under:

**ORDER**

Complaint stands dismissed.

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 under the Right to Information Act 2005.

Pronounced in open proceedings.

**Sd/-**

**( Prashant S. Prabhu Tendolkar )**  
State Chief Information Commissioner  
Goa State Information Commission  
Panaji – Goa.

**Sd/-**

**( Pratima K. Vernekar )**  
State Information Commissioner  
Goa State Information Commission  
Panaji – Goa.

KAK/-