

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 02/2019/CIC

Mr. Prakash R. Naik,
H. No. 67, Near Old GMC,
Ribandar-Goa 403006

..... Complainant

V/s

1. Dy. Commissioner &
Public Information Officer (PIO),
Dy. Commissioner,
Corporation of City of Panaji,
Panaji-Goa, 403001

2. The Commissioner &
First Appellate Authority (FAA)
Corporation of City of Panaji,

..... Opponents

Filed on: 09/01/2019

Decided on: 29/07/2022

ORDER

1. The Complaint filed under section 18 of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') by the complainant against Opponent No. 1 Public Information Officer (PIO) and Opponent No. 2 First Appellate Authority (FAA), came before the Commission on 09/01/2019.
2. The brief facts of this complaint, as contended by the complainant are that he had preferred an appeal before this Commission (Appeal No. 175/2017) which was subsequently disposed vide order dated 31/10/2018 with directions to the PIO to allow inspection and compliance within 15 days. PIO during the inspection provided files which were not the subject of the complainant and admitted that the requested files were not

available in his records. Terming the action of the PIO as misleading and malafide, the complainant approached the Commission by way of the said complaint.

3. Notice was issued to the concerned parties and the complaint was taken up for hearing. Pursuant to the notice, Shri. Sushant Nagvenkar appeared on behalf of the complainant, under authority letter. Advocate A. Rodrigues represented Opponent PIO, whereas Opponent No. 2, FAA was represented by Shri. Ramnath Pai, under authority letter. Complainant filed preliminary arguments on 29/08/2019, final arguments on 04/10/2019, counter submission dated 17/03/2021 to the submission of the PIO, an application dated 20/10/2021 and a memo dated 12/07/2022. PIO filed reply dated 20/06/2019 and 24/07/2019, later on 24/10/2019 filed additional submission and another submission dated 29/09/2021. Shri. Pradeep Mirajkar, former PIO filed an affidavit on 09/05/2022.
4. Complainant stated that he was compelled to file this complaint since the PIO did not comply with the order dated 31/10/2018 of the Commission in Appeal No. 175/2017. PIO was directed to provide a particular file for the inspection, however PIO provided some files which were not subject of his application and direction of the Commission. It was further admitted by the PIO that the requested file was not available. Complainant further submitted that PIO has consciously mislead the Commission and made false submission pertaining to the availability of information resulting in the passage of the order dated 31/10/2018.
5. Complainant further contended that it appears to him that the relevant file which he is seeking may not be available in the records of the PIO, the said situation raises question on the maintenance of records with the authority.

6. PIO stated that the file in the record of the authority was provided to the complainant for inspection and complainant's representative had done the inspection. PIO further stated that after the inspection, complainant has taken a stand that the said file is not the file in question. It is submitted that there is no other file available in the records of the authority, pertaining to the present matter.
7. PIO submitted that if the complainant is of the opinion that said file is not the actual file, then it is beyond the purview of the Act, as something which does not exist with the PIO and the authority, cannot be furnished under provision of the Act. Complainant was provided the available file, however he insists on producing a file which does not exist with the authority.
8. Shri. Sushant Nagvenkar, while arguing on behalf of the complainant contended that the PIO deliberately, with malafide intention did not provide the relevant file for inspection, hence the PIO has to be held accountable for his wrong action.
9. Advocate Anil S. Rodrigues, argued for the PIO and stated that the present complaint is based on the order passed by the Commission in Appeal No. 175/2017 and as per the direction, the PIO has provided the inspection and furnished the available information. Complainant cannot ask PIO to collate the data which is not available in his records.
10. The Commission has perused submissions of the complainant and the opponent, heard arguments of both the sides. After careful perusal, the Commission arrives at a conclusion that the entire issue of the present complaint is whether the PIO has provided the inspection of the relevant file

to the complainant or not. PIO on record has stated that as undertaken, he has provided the inspection of file No. F4/CCP/Eng./ILL/2016-2017, whereas the complainant contends that the file No. F4/CCP/Eng./ILL/2016-2017 was never provided for inspection.

11. During the proceeding of the said complaint, the complainant has brought on record a communication No. 3/66/TAX/CCP/2019-2020/3699 dated 08/07/2019 addressed to the complainant by the public authority, claiming that the same is the relevant file reference sought by the complainant and which was not provided by the PIO for inspection. The Commission has perused the said document.

12. Upon careful perusal, the Commission finds that though the entire issue pertains to the inspection of a particular file, in the absence of conclusive evidence, the Commission is unable to conclude whether the inspection of the relevant file was provided by the PIO or not. PIO contends that he has provided for the inspection of the relevant file, however complainant is not in agreement. In such a situation the complainant was required to come with conclusive evidence to substantiate his contention, which he has not succeeded. Complainant in this context has furnished a document dated 08/07/2019, issued by the authority, however the Commission is unable to subscribe to the contention of the complainant that the said document is the relevant file reference sought by him, since the complainant has not established any clear link between the said document and the file he had sought for the inspection.

13. Thus, in the absence of any conclusive evidence, the Commission is unable to uphold contention of the complainant.

Hence, no relief can be granted to the complainant in the present matter. The present complaint is decided accordingly.

14. In the light of above discussion, the complaint is disposed as dismissed and the 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