

**GOA STATE INFORMATION COMMISSION**

'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

Tel No. 0832-2437908/2437208 email: [spio-gsic.goa@nic.in](mailto:spio-gsic.goa@nic.in) website: [www.gsic.goa.gov.in](http://www.gsic.goa.gov.in)

---

**Complaint No. 12/2021/SCIC**

Roy C. D'Souza,  
R/o. H.No. 525, Mesta Bhat,  
Merces-Ilhas, Goa. 403005.

.....Complainant

V/S

1. Nathine Araujo,  
Public Information Officer/ Dy. Director (Vigilance),  
Directorate of Vigilance,  
Serra Building, Near All India Radio,  
Altinho, Panaji-Goa. 403001.

2. Mekala Chatanya Prasad,  
Special Secretary (Vigilance),  
Government of Goa,  
Secretariat, Porvorim-Goa.

.....Opponents

**Shri. Vishwas R. Satarkar**

State Chief Information Commissioner

**Filed on: 18/08/2021**

**Decided on: 06/07/2022**

**ORDER**

1. This complaint proceeding is initiated by the Complainant, Roy C. D'Souza r/o. H. No. 525, Mesta Bhat, Merces, Ilhas-Goa for disobedience of order dated 06/08/2020 passed by the Commission and challenging the order passed by the Special Secretary (Vigilance), Secretariat, Porvorim, Goa.
2. Brief facts herein are, that by order dated 06/08/2020 in complaint No. 01/2020/SIC-I, the Commission directed the Special Secretary (Vigilance), Secretariat, Porvorim Goa to conduct an inquiry regarding the missing file bearing No. ACB/VIG/Com/23-2014 and to fix the responsibility of missing file and also directed that inquiry shall be completed within the period of six months and copy of inquiry report shall be furnished to the Complainant.
3. According to the Complainant, the Special Secretary (Vigilance) has conducted the inquiry in a casual and deceptive manner. He also

alleged that the said inquiry report does not have any authenticity as the same contains no date and stamp of Department and therefore said Inquiry report is contrary to the order of the Commission.

4. Being aggrieved and dissatisfied with the Inquiry Report furnished by the Inquiry Officer i.e Special Secretary (Vigilance) the Complainant preferred this complaint, with the prayer that disciplinary action be initiated against the Inquiry Officer for disobeying the order of the Commission.
5. The main grievance of the Complainant is that during the inquiry no statement of Director of Vigilance or any other officer has been recorded by the Inquiry Officer. He further contended that the main witness, Mr. Vilas Kankonkar was the dealing staff who is now transferred to the office of Collectorate South, ought to have called for the inquiry.

Further according to him the Special Secretary (Vigilance) has failed to carry out the inquiry in proper manner and there was inordinate delay in completing the inquiry and instead of finishing the inquiry within a period of six months, he received the copy of inquiry report by registered post on 26/04/2021. And to support his contention he relied upon the judgement of Delhi High Court in the case **Union of India v/s Vishwas Bhamburkar (W.P. (C) 3660/2012)**.

6. According to the PIO, the present complaint filed by the Complainant is not maintainable for want of jurisdiction.

She also contended that as per the direction of the Commission, the Special Secretary (Vigilance) conducted inquiry and accordingly submitted the report and hence there was no disobedience of the order of the Commission.

7. Shri. Deepak Fadke, learned advocate appearing for the FAA, argued that he was neither the Public Information Officer nor the First Appellate Authority during the tenure as Special Secretary (Vigilance) and dragging him in this proceeding is incalled for and unjustifiable.

Further according to him, the Commission entrusted upon him the task of conducting inquiry of a missing file, he obeyed the order of the Commission, conducted the inquiry and submitted the report to the Department with a copy to the Complainant as directed by the Commission and that he complied with the order of the Commission.

He further argued that present complaint proceeding is not maintainable in the eyes of law as relief sought is not tenable by law and submitted that the Inquiry Officer has conducted the inquiry in a fair and proper manner as per own wisdom taking in to consideration the material evidence produced by the rival parties. Hence the Commission has no jurisdiction to interfere in the inquiry report or the merits of the inquiry report.

To substantiate his claim he relied upon the judgement of the High Court of Delhi in the case **Ved Prakash Abbot v/s Kishore K. Avarsekar & Ors. (Cont. C.(c) No. 579/2017)** and another judgement of Delhi High Court in the case **S.P. Mangla v/s Sushil Kumar Saxena (Cont. C. (c) No. 162/2014)**.

8. I have perused the pleadings, replies, scrutinised the documents on record, considered written and oral submissions of the rival parties and the judgement referred to support their contention.
9. It is a matter of fact, that the Commission directed the Special Secretary (Vigilance) to conduct an inquiry regarding the missing file bearing No. ACB/VIG/Com/23/2014 only to curtail of wilful suppression of the information by vested interest. As far as RTI Act

is concerned it can only facilitate in providing information to the citizen in case it is available with the public authority.

In the present case, attempt was made by the Commission to locate the information under its powers and directed the Special Secretary (Vigilance) to carry out the inquiry and put an end to the proceeding. The Special Secretary (Vigilance) conducted the detail inquiry of the missing file and submitted the report to the department. The Report concludes as under:-

*"Although the file is found to be inwards in the office of the Directorate of Vigilance on 21/10/2014, further movement of the file cannot be verified as the file is not shown to be marked to any specific officer, section or office. In the absence of such entry is very difficult to fix responsibility on any individual or section for the missing file. During the relevant period it is revealed that Shri. Vilas Kankonkar, Junior Stenographer was the dealing hand, incharge of the entry section of the Directorate of Vigilance. After inquiry with Director of Vigilance it is informed that the said official has been transferred to the Collectorate South vide order dated 19/09/2017 on FR 15 and has been relieved on 05/10/2017.*

*It is also pertinent to note that at that time, there was no Security in building at night time and there are no CCTV Cameras installed in the office building. Therefore, it would be difficult to ascertain whether the said file has been stolen or taken away by any other person.*

*However considering that this is an inquiry file of the Department, the Director of Vigilance is directed to*

*instruct all the sections of the Directorate of Vigilance to conduct a thorough check to locate the missing file.*

*Further the Department is directed **to register a FIR on the missing file.***

From the bare reading of the content of Inquiry Report, it shows that inspite of the investigation the Inquiry Officer could not fix the responsibility on any individual for the missing file for the various reasons and therefore directed the Department to register a FIR on the missing file.

10. The main grievance raised by the Complainant that the report of the Inquiry Officer does not contain date and seal of the department. It is entirely true and correct that the Inquiry Officer has not put the date and seal on his report, however, said report is duly signed by the Inquiry Officer and submitted to the department and aptly furnishing copy to the Complainant. There is no dispute that inquiry is conducted by the officer having the rank of Secretary as directed by the Commission. There is also no dispute that inquiry is over and complete. It is also admitted by the Complainant that he received the copy of the Inquiry Report. Failing to put the date in and itself is not enough to discard the Inquiry Report.

11. However considering the nature of relief that have been sought by the Complainant in the present proceeding it appears that, the Complainant wants this Commission to examine the merit of the Inquiry Report prepared by the Special Secretary (Vigilance) and then to initiate disciplinary action for disobeying the order of the Commission.

12. Under the Act, the Commission has a basic function to perform and the same is constituted under the Act with powers,

more particularly under section 18, 19 and 20 of the Act. Such powers consist of providing existing information held in any form or in case of non-compliance of said mandate without reasonable cause then to penalise the PIO. No powers are granted to the Commission to initiate disciplinary action against the stranger who is not a party to the proceeding. The Commission has no authority to look into the competence or merit of the Inquiry Report, therefore it is unreasonable to interfere with the same. The Commission has no power to act as an Appellate Authority. This view is fortified by the High Court of Gujarat in the case **State of Gujarat & Anr. v/s Pandya Vipulkumar Dineshchandra (AIR 2009 Guj. 12)** with following observation:-

*"5..... The power of the Chief Information Commissioner is a creation of the statute, and his power is restricted to the provisions of the Act. He has power to direct for supplying of the information, and he may in some cases, if the information are not correctly supplied, proceed to direct for correction of such information, and to supply the same. However, his power would end there, and it would not further exceed for adjudication of the rights amongst the parties based on such information. Such powers for adjudication of the rights inter se amongst party on the basis of such information are not available to him. The aforesaid is apparent from the object and the provision of the Act."*

By another identical judgement the High Court of Delhi in the case of **Delhi Development Authority v/s Central Information Commission & Anrs (W.P. No.(c) 12714/2009)** has held that:

*"The Central Information Commission is not a court and certainly not a body which exercise plenary jurisdiction."*

*The Central Information Commission is a creature of the Statute and its powers and functions are circumscribed by the statute. It does not exercise any power outside the statute."*

13. The Complainant relied upon the judgement passed by the High Court of Delhi in the case **Union of India v/s Vishwas Bhamburkar (Supra)**. In that case the petitioner assailed the order of the Commission primarily on the ground that, the Commission does not authorised to direct an inquiry to the department concerned to trace the missing file and fix the responsibility for the loss of record. In fact the previous order of the Commission in the case, Complaint No. 01/2020/SIC-I was decided absolutely on the basis of the above judgement only. The said judgement laid down the legal ratio as under:-

*"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. Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/ office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in*

*the records of the government at some point of time or not."*

On going through above observation, same is not relevant here in the present complaint.

14. Adv. Deepak Fadke, learned advocate appearing for the Respondent relied upon the judgement of Delhi High Court in the case **Ved Prakash Abbot v/s Kishore K. Avarsekar & Ors. (Supra)** and in the case **S.P. Mangla v/s Sushil Kumar Saxena (Supra)**, however said judgement deals with regard to the contempt petition filed under contempt to Court Act 1971 for wilful disobedience of the order of Court. Said judgement are not relevant and applicable in the present proceeding as in the present case the grievance is against the stranger who was not a part in the original petition.
15. In the present case, in the event if the Complainant feel that, if any official has failed to perform his duty in proper manner or done something which is contrary to law he can approach the concerned competent authority.
16. In the light of aforesaid discussion and the legal precedence, the prayer like to initiate disciplinary action on Inquiry Officer cannot be granted by the Commission.

In the above circumstances, I hold that complaint suffers from jurisdictional error and anomalies, therefore dismissed.

- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-  
**(Vishwas R. Satarkar)**  
State Chief Information Commissioner