

# GOA STATE INFORMATION COMMISSION AT PANAJI

**CORAM:** Shri Afonso Araujo, State Information Commissioner

Complaint No. 49/2008  
In Appeal No. 65/2007.

Milagrina D'Souza,  
H. No. 142, Carrasvaddo,  
Mapusa, Bardez – Goa.

..... Complainant.

V/s.

1. The Administrator of Comunidades,  
North Zone, Near Civil Court Junction,  
Feira Alta, Mapusa, Bardez – Goa.
2. Shri Michael Carrasco,  
The Power of Attorney of the Mapusa  
Comunidade, Mapusa – Goa.
3. The First Appellate Authority,  
The Additional Collector – I (North),  
Office of Collector, Panaji - Goa

..... Opponents.

Adv. V. S. N. Alornekar for the Complainant.

Adv. B. D. Nazareth for Opponent No. 1.

## **J U D G M E N T**

(Per Afonso Araujo)

This Complaint deals with the issue of non-compliance of the direction given on the missing of a file which could provide the information under the Right to Information Act, 2005 (for short the RTI Act).

2. By various requests, especially on 3/5/2006, the Complainant approached the Public Information Officer, the Administrator of Comunidades, North Zone, Bardez – the Opponent No. 1 and sought information under the RTI Act in respect of 'Aforamento' granted to the later father of the Complainant, Diago Antonio de Souza by the Comunidade of Mapusa, of the property 'Comannaikacho Soddo' situated in the ward Carraswaddo, Mapusa, and surveyed under P. T. sheet No. 60 of Chlata No. 7 of City Survey, Mapusa and which consists of documents namely : inspection report of the property; valuation report; minutes of handing over of temporary possession; minutes of handing over of definite possession and payment of charges made to the Comunidade in connection with the said 'Aforamento'.

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3. In the reply dated 29/9/2006, the Opponent No. 1 stated that the Comunidade of Mapusa informed that the old process file bearing No. 32/1930 is not traceable in the Comunidade Office and further stated that the file is not also traceable in the office of the Opponent No. 1. Not satisfied with the information provided, the Complainant challenged the decision of the Opponent No. 1 in the First Appeal and by order dated 28/5/2007, the First Appellate Authority closed the case on the reasoning that the file is not traceable and directed the Opponent No. 1 to investigate the disappearance of the file and lodge a FIR before the Police.

4. Aggrieved by the Order of the First Appellate Authority, the Complainant preferred the Second Appeal and by order dated 7/3/2008 passed in the Appeal No. 65/2007-08/Comm., this Commission gave directions to the Opponent No. 1 to file compliance report within one month as to whether or not a Police Complaint was filed on the missing document. In the Complaint No. 06/2008, the grievance of the Complainant is that the order dated 7/3/2008 has not been complied with and a defective FIR was filed before the Police. This Commission by order dated 20/08/2008 directed the Additional Collector of North Goa, to inspect both the offices of Opponent No. 1 and Opponent No. 2, search for the missing file as well as fix up the responsibility for the missing file and the Opponent No. 1 to file revised FIR. Non-compliance of the order dated 20/08/2008 is the subject matter of the present Complaint.

5. Shri Alornekar, Learned Advocate appearing for the Complainant urged that the report prepared by the Additional Collector is cryptic and the manner it was written, it can be prepared by sitting in his own office. Shri Nazareth, Learned Advocate for the Opponent No. 1 submitted that the Additional Collector complied with the direction which consisted in inspecting the offices and searching for the missing file and that as no file could be found inspite of the search made, the report was prepared accordingly.

6. I have gone through records of all the three cases and taken into consideration the submissions advanced by the respective Advocates.

7. The Opponent No. 1 in order to decide the request of the Complainant under the RTI Act also sought the assistance of the Opponent No. 2, since it pertains to the 'Aforamento' granted by the Comunidade of Mapusa to the father of the Complainant. Neither the Opponent No. 1 nor the Opponent No. 2 could provide the information required to the Complainant on the footing that the relevant file could not be located. So also the First Appellate Authority endorsed the decision of the Opponent No. 1. However, in the order dated 7/3/2008 passed in the Appeal No. 65/2007-08/Comm., this Commission while arriving at the conclusion that the application/appeal under the RTI Act can be disposed of only when the matter of disappearance or misplacement of the file was sorted out, made the following observation: -

"It is not clear whether the old file No. 30 in which this aforamento is said to be existing has been sent to the Administrator's office or not. There is no specific mention in any of the statements to this effect. Similarly, it is also not known how and why the Administrator – the Respondent No. 1 has taken possession of the current files of the Comunidade wherein the liability of the collections of the "foros" by the Comunidade from the allottees of land is not yet completed. Further we are also not sure and nobody has mentioned anything in any of their statements whether the concerned aforamento has been converted into the permanent possession by collecting 20 times of annual foro in respect of the land granted to Diago D'Souza and whether any Title Deed, was given to the said Diago D'Souza in respect of the said land. If this is not, the necessity of sending this file to the office of the Respondent No. 1 does not arise."

8. This controversy whether the file in question for whatever reasons, was sent or not by the Opponent No. 2 to the Opponent No. 1 cropped again in the Complaint No. 06/2008 and this Commission in the order dated 20/8/2008 remarked: "We are at loss to understand which statement is correct." and directed the Additional Collector of North Goa to

inspect both the offices Opponent No. 2 and Opponent No. 1 and to search the missing file as well as fix up responsibility for the missing file and the Opponent No. 1 to lodge a revised FIR with the Police.

9. In pursuance of the directions given, the Additional Collector with the help of one assistant, carried the inspection and searched the two offices and prepared two respective reports one on 29/08/2008 and the other on 16/12/2008. On perusing these two brief reports it indicates that the Additional Collector confined only to search the office of the Opponent No. 1 and Opponent No. 2 for the missing file and nothing has been done in respect of the direction fixing the responsibility of missing file. No doubt that a search is also required in order to fix the responsibility on the missing of a file but a negative result of the search carried is not the sole criteria to dispense with the direction to fix the responsibility on the missing file. There are other aspects which required to be considered such as examine and if required record the statement of those persons/public authorities, who one way or the other were and are connected with the file including the Complainant; which person/public authority had the custody of the missing file; trace the itinerary of the missing file in view of consistent and contrary stand taken by the Opponent No. 2 stating that the file was sent to the Opponent No. 1 vis a vis the contention of the Opponent No. 1 that the missing file was not required to be sent to the Opponent No. 1.

10. Since the Additional Collector, did not comply with the directions of the Commission to fix the responsibility on the missing of file, a thorough inquiry is required to be conducted so that depending on the outcome of the inquiry on missing of file, the responsibility on the missing of the file can be fixed and the provision of section 20 of the RTI Act for imposing the penalties can be resorted to. Hence, the following Order: -

### **ORDER**

The Complaint is allowed. The Additional Collector, North Goa to hold an inquiry, on the missing of file in respect of 'Aforamento' mentioned in the information sought by the Complainant on 3/5/2006.

The Additional Collector to submit the report of this inquiry on missing of file within three months from the date of receipt of the order.

The Opponent No. 1 to file revised F.I.R. on the basis of the inquiry and report compliance on 30/10/2009 at 10.30 a.m.

Pronounced in the open court on this 22<sup>nd</sup> day of July, 2009.

Sd/-  
(Afonso Araujo)  
State Information Commissioner

