

GOA STATE INFORMATION COMMISSION

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

CORAM: Shri Juino De Souza: State Information Commissioner
Appeal No.21/SCIC/2013

Mrs. Fatima Fernandes,
W/o Bonafacio Fernandes,
R/o. H. No.6/129,
Khobrawaddo,
Calangute,
Bardez – Goa.

.....Appellant

v/s

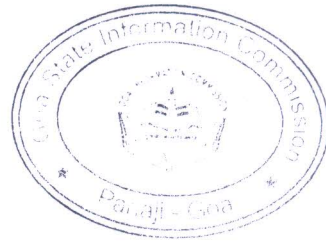
Public Information Officer,
Director,
Directorate of Panchayats,
Panaji - Goa.

..... Respondent

Relevant emerging dates:

Date of Hearing : 25-08-2016

Date of Decision : 25-08-2016



ORDER

1. Brief facts of the case are that the Appellant had vide an RTI application dated 17/10/2012 filed by one Adv. Rohit Bras de Sa (in his own name) sought certain information from the Respondent PIO under RTI Act, 2005.
2. The information sought is in respect of an enquiry under the Ref. No. 19/DP/Inquiry-Calang./2012/1457 in connection with forwarding wrong data and manipulations of the delimitation of wards of Village Panchayat Calangute for the Election of the Village Panchayat of Calangute and is as follows:-
 - a) The copy of the enquiry report of the enquiry conducted against Mr. Subhodh Prabhu (The Former Secretary of the Calangute Village Panchayat).

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- b) The copy of the enquiry report conducted against Mrs. Fatima Fernandes (Clerk of the Village Panchayat of Calangute).
- c) The copy of the enquiry report conducted against Mr. Mahesh Samant (the Talathi)
- d) The copy of the enquiry report conducted against Mr. Shivprasad Naik (The Block Development of Mapusa)
- e) Detail of the action taken in the enquiry proceeding against Mr. Subhodh Prabhu and Mrs. Fatima Fernandes.

Please note the aforesaid information is sought for relying upon the same before the Hon'ble High Court of Bombay at Goa, in Writ Petition No. 356/2012.

- 3.** The Respondent PIO vide his reply No26/87/DP/RIA/2012/4907 dated 06/11/2012 informed that the said information cannot be disclosed as it would adversely affect the ongoing investigation and was rejected u/s 8(1)(h) of the RTI act 2005.



- 4.** It is seen that thereafter that one Mrs. Fatima Fernandes who was not the original RTI applicant and against whom an enquiry was being conducted by the Public Authority filed First Appeal on 27/11/2012 before the First Appellate Authority and appointed Adv Rohit Braz de Sa (who was the original RTI applicant) to defend her case in the first appeal and the FAA vide order dated 11/01/2013 dismissed the First Appeal holding that the PIO was correct in rejecting the RTI application under 8(1)(h) as an inquiry is under progress.
- 5.** Being aggrieved by the order of the FAA, the said Mrs. Fatima Fernandes has filed a Second Appeal before this Commission registered on 07/02/2013 and has prayed that Appeal be allowed and the PIO be directed to furnish the information as sought under the RTI Act and other such reliefs.

- 6.** During the hearing the Appellant Mrs. Fatima Fernandes is absent without intimation to this Commission. It is seen from the Roznama that the Appellant has remained continuously absent right from 30/04/2013. The Respondent PIO is represented by Shri K.D. Halarnkar employed in the O/o Directorate of Panchayat who is present in person.
- 7.** The Representative of the PIO submits that the information was rejected u/s 8(1)(h) as investigations and enquiry was going on against the persons of whom information was sought and that the matter was sub-judice before the Hon'ble High Court of Bombay at Goa in Writ Petition No.356/2012. It is also submitted that information can now be furnished if the Appellant approaches the office of the PIO free of cost.
- 8.** The commission has perused the material on record including the RTI application 17/10/2012 filed by Adv. Rohit Praz de Sa using his letter head, reply of the PIO being No26/87/DP/RIA/2012/4907 dated 06/11/2012, order of the FAA and second appeal memo.
- 9.** The main point for determination before the Commission is Whether a different person who is not the original RTI applicant has any locus standi to file a First appeal and subsequently a Second Appeal? And whether such an Appeal can be entertained by the commission under the RTI act 2005.
- 10.** Firstly the original RTI application u/s 6(1) was filed by Adv. Rohit Bras de Sa and the PIO had furnished a reply to this RTI applicant in his name rejecting the information u/s 8(1)(h) and whereas the Second Appeal filed before this commission is by a different person of name Fatima Fernandes who is not the original information seeker. Section 19 (3) of Right to Information Act, deals with the appeal procedure and the said provisions are made purely for the use of an aggrieved RTI applicant or any person who may be treated as a third party to an RTI application and not any other person.

The relevant provisions are reproduced below:

"19. (1) Any person who, does not receive a decision within the time specified in sub section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority: ...

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, u/s. 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision u/s/s. (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

- 11.** Thus scope of section 19 implies that only two categories of persons may challenge the decision of a PIO a) an aggrieved RTI applicant and b) a third party who is aggrieved by a PIO's decision. Further, section 19(1) only permits an aggrieved RTI applicant to submit a first appeal to an FAA on two grounds only, *i.e.*, if no decision has been received from the PIO or if he is aggrieved by a decision of the PIO, namely, rejection of the request or partial disclosure. Therefore the first appeal process does not give any other right of appeal to any other person.

- 12.** It should be noted that section 19(1) refers to a First Appeal which may be submitted by the aggrieved RTI Applicant or an aggrieved third party against the decision of the PIO and section 19(3) refers to a Second Appeal by the aggrieved RTI applicant against the First Appellate Authority's (FAA's) order. It is not open for any other person to approach the concerned Information Commission challenging the order of the FAA. In the matter of Chief Information Commr. And Another vs. State of Manipur and Another [(2011) 15 SCC 1], the Hon'ble Supreme Court of India explained the scheme of appeals provided for in the RTI Act in the following words: ...5

"35. ... Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. ...

43. There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information." [emphasis supplied]

14. In the case at hand it is observed that the Appellant is neither the aggrieved RTI applicant nor an aggrieved third party and has therefore no locus standi to file either the First or the Second Appeal. It is also surprising as to how the First Appellate Authority admitted and decided the First Appeal by overlooking this fact and it may be likely perhaps that this has happened inadvertently and in good faith.
15. In view of the foregoing the Commission comes to the conclusion that since the original RTI application has been filed by Adv Rohit Braz de Sa and signed by him and whereas the Second appeal is filed by a different person of the name Fatima Fernandes who is neither the aggrieved RTI applicant nor an aggrieved third party but a different person altogether against whom an enquiry is being conducted as such the Second Appeal is not maintainable under the RTI Act, 2005.

(Ref: Case No. CIC/SS/AT/A/2010/001148/SS)

The Appeal accordingly stands rejected.

All proceeding in the Appeal case are closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the Order be given free of cost.



Sdt
(Juino De Souza)
State Information Commissioner