

# GOA STATE INFORMATION COMMISSION

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

**CORAM: Shri Juino De Souza State Information Commissioner.**

**Appeal No. 27/SIC/2011 & Appeal No 28/SIC/2011**

Shri I. S. Raju,  
Benaullim, Salcete – Goa.

..... Appellant

v/s

Public Information Officer  
Dy. Director of Panchayats North,  
Panaji – Goa.

..... Respondent

**Relevant emerging dates:**

Date of Hearing : 30-03-2016

Date of Decision : 30-03-2016

## **O R D E R**

1. Both the Appeals pertain to one and the same parties and are involving similar subject matter and as such they are combined together and disposed off with one common order.
2. Brief facts of the Case are that the Appellant Shri I. S. Raju had filed two separate Appeals Nos. 27 & 28 before the Commission in the year 8/11/2011 and this Commission by two separate orders both dated 24-05-2011 had disposed the Appeals stating that no intervention of the commission is necessary as far as information is concerned and that it is for the Appellant to prove his case that the information furnished to him was incorrect, incomplete, misleading, etc.
3. During the hearing the Appellant is absent despite advance notice sent to him by Registered Post. It is seen from the roznama that during the last hearing on 16-02-2016 the Appellant Mr. I. S. Raju aged 81 years was present along with his wife and submitted that he has filed necessary documentary evidence before the commission proving that the information furnished by the Respondent is misleading, false and incorrect. He had requested the Commission that he has to come from Benaullim, Salcete and it is not possible for him to attend again and prayed for disposing this old matter at an early date even in his absence.

4. The Respondent PIO is represented by Miss Anjali Shirodkar, Secretary in the Directorate of Panchayats present in person and submits that all information true and correct was furnished to the Appellant and that the Commission had Ordered the Appellant to prove his case that information furnished to him was incorrect, incomplete, misleading, etc and as such the enquiry does not pertain to the PIO.
5. The Commission on scrutiny of the file observes that the Appellant had filed two separate Appeals Nos. 27 & 28 before the Commission in the year 8/11/2011 and not Complaint cases before the commission.
6. In para 6 of the Order dated 01-02-2012 this commission had stated from the last line onward *'With this view in mind, I am of the opinion that the Appellant must be given an opportunity to substantiate that the information given to him is incomplete, incorrect, misleading, etc as provided in Section 18(1)(e) of the RTI Act'*. The point for determination therefore is 'Whether a Commission can order an enquiry under section 18 of RTI when deciding an Appeal case which falls under section 19 of the RTI Act'?
7. The Hon'ble Supreme Court in CIC vs. State of Manipur & Ors has held that the procedure contemplated under Section 18 of the Act was altogether different from the procedure contemplated under Section 19 of the Act.

Section 18 of the Act, to the extent it is relevant provides that it shall be the duty of the Commission to receive and enquire into a complaint from any person who has been refused access to any information requested under the Act or who has not been given a response to a request for information or access to information within the time limits specified under the Act. It is, therefore, obligatory for the Commission to decide such a complaint on merit instead of simply directing the CPIO to provide information which the complainant had sought. If the Commission finds that the CPIO had without reasonable cause refused to receive an application for information or had not furnished information within the prescribed time or had given incorrect, incomplete or misleading information, it is required to impose prescribed penalty upon such a CPIO/SPIO, as the case may be.

Section 19 of the Act, on the other hand, provides for a first appeal to the First Appellate Authority under Sub-section (1) and a Second Appeal to the Commission under Sub-section (3) of the aforesaid Section. Sub-section (8) of the aforesaid Act deals with the power of the Commission with respect to the appeals preferred in terms of Sub-section (3) of the said Section and reads as under:-In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,-

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including- (i) by providing access to information, if so requested, in a particular form; (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be; (iii) by publishing certain information or categories of information; (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records; (v) by enhancing the provision of training on the right to information for its officials; (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4; (b) require the public authority to compensate the complainant for any loss or other detriment suffered; (c) impose any of the penalties provided under this Act; (d) reject the application.

8. A closer scrutiny of the ingredients clearly point out that while the State Information Commission has the power to conduct an enquiry in a matter before it under Section 18 of the Act, however no such power is granted under Section 19 of the RTI Act which is an purely an Appellate procedure.

9. That apart the very fact that this Commission in its Order of 27-05-2015 has stated that no intervention of the commission is necessary as information is furnished is sufficient to prove the bonafide that the PIO has acted reasonably and diligently and that information given was as available and as it existed as per the records and which is the mandate of the RTI Act.

10. As stipulated in the RTI Act the role of the PIO is to provide information as available from the records. Regrettably the PIO cannot procure information for the satisfaction of the Appellant. The PIO is not authorized to give any information which is non-existent nor can he create or analyze the information correctly as per the whims and fancies of the Appellant. It is not a case where the PIO has denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information.

11. I am of the view that after arriving at such conclusion and being satisfied that there was no malafide intent by the PIO the Commission should have closed the Appeal case completely rather than deciding the Appeal by partly ordering a one sided enquiry which is not only a long drawn time consuming process that may take years for the enquiry to conclude but will also harass the Appellant who is a Octogenarian (aged above 80 years) with delays and unnecessary expenditure, besides not serving any useful purpose and will be an exercise in futility.

12. The decision of ordering an enquiry therefore in my considered opinion is erroneous and suffers from legal infirmity. The Commission therefore finds it prudent to recall both the orders passed by this commission on 24-05-2011 and accordingly order the enquiry proceedings in both the Appeal cases to be closed. All proceedings in the Appeal cases accordingly stand disposed.

13. There is no need for the Appellant to prove his case before this commission however the Appellant if so advised can seek other legal remedies to agitate his grievance that the information furnished was incorrect and misleading before the appropriate forum in accordance with law.

14. The Commission however makes it clear that this Order will not come in the way of the Commission inquiring into a complaint filed under section 18 if the findings so deserve an enquiry.

Pronounced in open court before the parties who are present. Notify the parties concerned. Authenticated copies of the order be given free of cost.

sdt

(Juino De Souza)  
State Information Commissioner

