

**GOA STATE INFORMATION COMMISSION**  
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa.

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

**Appeal No. 53/SCIC/2012** / 228

Escrivao of Comunidade of Chicalim,  
Comunidade Office,  
St. Francis Xavier Church,  
Chicallim-Goa

..... **Appellant**

**v/s**

1. Edwin Mascarenhas, Chicalim,  
58/B, Near Chicali Park,  
Chicalim Goa.
2. PIO, Administrator of Comunidade  
South Zone, Margao
3. FAA: Addl. Collector South, Margao-  
Goa.

..... **Respondents**

**Relevant emerging dates:**

Date of Hearing : 24-06-2016

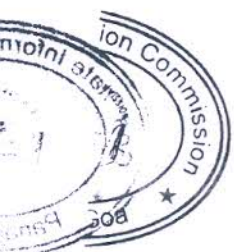
Date of Decision : 24-06-2016



**ORDER**

1. Brief facts of the case are that the Appellant is a comunidade body and was named as the deemed PIO in a First appeal filed by one Edwin Mascarenhas, the original RTI applicant and information seeker and who has been joined herein in the Second Appeal as Respondent No 1. The Appellant has filed this second Appeal before the commission on 12-03-2012 against the order passed by the FAA praying that the impugned order of the FAA dated 09-03-2012 be quashed and set aside and for other such reliefs.
2. During the hearing the Appellant who was former Escrivao of Comunidade of Chicalim, Shri Tukaram Gaude and who is currently Head Clerk/Acting Secretary in the Office of Administrator of Comunidade PIO who is the Respondent No. 2 is present in person. The Respondent No 1 Edwin Mascarenhas RTI applicant is also present.
3. The Appellant submits that he wants an adjournment to contact a lawyer in the matter and which is objected by the Respondent No 1 on the grounds that the Appellant was afforded such an opportunity on two occasions i.e 25/04/2016 & 24/06/2016 (today) and that the Appellant is seeking adjournments merely as an excuse to keep the matter alive without justifiable reason.

4. The Respondent No 1 further submits that the Appeal is not maintainable as the Comunidade of Chicalim which is the deemed PIO was neither the RTI applicant nor the information seeker in the matter and as such the Second Appeal should be dismissed. The Respondent No 1 contends that he is the original RTI applicant and that he had filed the First Appeal and that the First Appellate Authority (FAA) had passed an order after hearing the Appellant who was the Respondent No 2 in the First Appeal directing the Appellant herein to furnish information to him the Respondent No 2 within seven days.
5. The Respondent No 1 vehemently argues that remedy of filing Second Appeal is available only to the information seeker / RTI applicant and not to the Public Information Officer (PIO) who is not an aggrieved party. The Respondent No 1 furnishes a copy of his reply dated 8<sup>th</sup> Mar 2012 stating that the Second Appeal is not maintainable and such a view has been held by this Hon'ble Commission in Appeal No7/2006/Sectt in the order dated 27/07/2006 which has been upheld by the said Commission in Complaint no.494/SCIC/2010 by its order dated 09/11/2010. Therefore the Second Appeal ought to be dismissed.
6. It is seen from the scrutiny of the file that the present Second Appeal before this Commission is filed by the Deemed PIO namely the Escrivao of the Comunidade of Chicalim against the decision of FAA. The Deemed PIO is the information provider, and not the seeker of the information.
7. Section 19 (3) of Right to Information Act, deals with the appeal procedure and the said provisions are made in the interest and for the benefit of information seeker. There is also no provision in the Right to Information Act to consider a Second Appeal filed by PIO's against the order of FAA as the very purpose of this Act is to provide the information. The Appellant could not point out any provisions under which he came in a second appeal against the Order of First Appellate Authority (FAA).
8. The appeal process created u/s. 19 of the RTI Act is purely for the use of an aggrieved RT I applicant or any person who may be treated as a third party to an RTI application but not for the purpose of the PIO or FAA or the Public Authority itself. 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:

9. 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 to disclose information pertaining to he/she/it which is treated as being confidential by that third party. 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. A third party to an RTI application may also submit a first appeal to the FAA u/s. 19(2). Therefore the first appeal process does not give any other right of appeal to any other person including any other officer of the public authority.

10. It should be noted that section 19(3) refers to a second appeal and not a fresh appeal against a decision made u/s. 19(1) which means an appeal that may be submitted is only against the FAA's order by the aggrieved RTI Applicant or an aggrieved third party. It is not open for any other person including any officer of the public authority such as the concerned PIO or the Public authority itself to approach the concerned Information Commission challenging the order of the FAA. In a complaint or second appeal the PIO and the FAA appear as representatives of the public authority which appointed them.

11. The only course of action available to a public authority to demand the setting aside of an order of the CIC is the route of judicial review by invoking the writ jurisdiction of the concerned High Court under Article 226 of the Constitution. In the matter of Chief Information Commissioner 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 RT I Act in the following words:



"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. ...

Apart from that the procedure under Section 19 of the Act, when compared to Section 18, has several safeguards for protecting the interest of the person who has been refused the information he has sought. Section 19(5), in this connection, may be referred to. Section 19(5) puts the onus to justify the denial of request on the information officer. Therefore, it is for the officer to justify the denial. ...

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]

12. Nowhere in its detailed explanation of the scheme of section 19 does the Hon'ble Supreme Court recognize the right of a public authority or any of its officers to challenge a decision of their PIO or FAA made under the RTI Act.
13. The Commission thereof comes to the conclusion that the order passed by the FAA does not give any scope to the DEEMED PIO to challenge the same before the second appellate authority. The Second Appeal is not maintainable as the PIO /DEEMED PIO has no locus standie to challenge the order of FAA before this commission. The Second Appeal accordingly stands dismissed.

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.



Sd/-  
**(Juino De Souza)**  
**State Information Commissioner**

