

GOA STATE INFORMATION COMMISSION

‘Kamat Towers’, Seventh Floor, Patto, Panaji – Goa

Chief Information Commissioners.

Appeal No.156/SIC/2009

Dr. D. J. De Souza
C/o Luz Lab, Libania Bldg.,
New Market,
Margao-Goa. Appellant

V/s.

1. Public Information Officer/
Inspector of Survey & Land Records,
Borda, Margao – Goa. Respondent No. 1
2. First Appellate Authority/SGPDA,
New Market Complex,
Margao-Goa. Respondent No. 2

Filed on 22/12/2009
Decided on 11/04/2016.

O R D E R

- 1) This order deals with the issue of maintainability of this appeal. The facts that lead to the present appeal are as under:
 - (a) The Appellant filed two applications before the Respondents, the first being dated 13/08/2009 and the other dated 29/09/2009 by enclosing fees of Rs.10/- each.
 - (b) The appellant received reply from the respondents on 1/08/2009 and 06/11/2009 to send Rs.4/- to get the necessary information.
 - (c) According to the appellant the above material shows that the respondent is not interested in furnishing the necessary information and therefore has violated the provisions of the RTI Act, hence the appeal.
- 2) Notice of the appeal was given to the parties pursuant to which they appeared and the Respondent No.1 filed reply.
- 3) When the matter came for hearing before us on 18/03/2016 it was observed from the records that the Appellant has filed this appeal without filing first appeal as is provided u/s 19(1) of the RTI Act. The appellant in the present appeal has challenge the order of PIO passed U/s 7(1) of the RTI Act. Hence, clarification was sought and the appellant was directed to file copy of the order of the First Appellate Authority (FAA) if any, failing which the matter was posted

for orders. In spite of this opportunity the appellant has not filed any copy of order passed by the FAA or even the Memo of appeal evidencing that the first appeal was at all filed against the non furnishing of information by the PIO.

4) We have considered the records and proceedings. The appellant challenges the action of PIO of not furnishing of the information within the statutory period. The provisions of the Right to Information Act under section 19 (1) confers powers to aggrieved party to prefer an appeal to such officer who is senior in rank to the PIO. Such senior officer is the First Appellate Authority (FAA). Such appeal can be filed, by aggrieved party against the decision of the PIO or after expiry of 30 days, if no information is furnished by the PIO.

Thus from the above provisions, the order of PIO can be challenged only by first appeal before FAA.

5) The Jurisdiction of the Commission as provided under the Right to Information Act under section 19(3) is as under

"19(1).....

(2).....

(3) Second appeal against the decision under sub section (1) shall lie within 90 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.

Provided"

Thus the role of this Commission, as prescribed under section 19(3) is by way of second appeal and that too only against the decision of F.A.A. under sub section (1). In other words a second appeal to the commission would lie only if F.A.A. passes an order in respect of the earlier order passed by the PIO. Thereafter the role of the Commission would come in play only after issue is decided by a first appeal before F.A.A.

6) In the present appeal the appellant, claim to be aggrieved by the conduct of the PIO by not passing the order or furnishing the information on his application under section 6 of the Act. Hence remedy is by way of first appeal under section 19(1) of the RTI Act. It is only after exhausting the remedy of the first appeal that the appellant can approach this Commission by way of second appeal under section 19(3) of RTI. The Act does not provide any appeal against the action of PIO directly to the Commission either by way of concurrent powers or by way of first appeal . In the circumstances, to our mind the present appeal is pre-matured and the same cannot be entertained by this Commission and the appellant can file appeal against the action of PIO only to First Appellate Authority.

7) In the circumstances we hold that the present appeal filed by the appellant is not maintainable.

8) However, considering the time the appellant has spent before this commission in pursuing the present appeal, in the interest of justice, we feel it appropriate that an opportunity is given to the appellant to file first appeal before the FAA against the action of PIO as contemplated under section 19(1) of RTI Act and the time taken in filing and pursuing this appeal before this Commission is set off. However, the appellant shall be entitled to extension of this time provided, he file the appeal before the FAA within a period of 30 days from the date of receipt of this order by him. Appeal is disposed off accordingly.

Announced in the open proceedings. Parties to be notified.

Place: Panaji-Goa.

Sd/-
(Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa

Sd/-
(Mrs Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission
Panaji-Goa

