

**GOA STATE INFORMATION COMMISSION**

Kamat Tower, Seventh Floor, Patto Panaji-Goa

**CORAM: Smt. Pratima K. Vernekar, State Information Commissioner.**

**Complain 47/ SIC/2014/**

**Sharmila S. Khandeparkar,  
H.No. 100, Indira Nagar,  
Chimbel North – Goa**

**..... Complainant**

**V/s.**

**1. The Public Information officer (PIO),  
Panchayat Secretary of Chimbel,  
Chimbel Panaji Goa.**

**.....Opponent/Respondent**

**Complaint filed on: 17/12/2014**

**Decided on: 12/10/2016**

**ORDER**

- 1. Brief facts of the present Complaint are that Smt. Sharmila S. Khandeparkar, by an application dated 21/07/2014 had sought information from Public Information Officer (PIO), Village Panchayat Chimbel, Goa regarding **the certified copies of the notice served to stop the illegal construction in Chimbel from April 2012 to July, 2014.****
- 2. In response to her application the Opponent No. 1, PIO, Panchayat Secretary, Chimbel vide their letter dated 26/08/2014 provided her information.**
- 3. Being not satisfied with the information provided to her, 1<sup>st</sup> Appeal came to be filed by the Complainant before First Appellate Authority (FAA), BDO, Panjim and the FAA by an judgment and Order dated 29/10/2014 allowed the Appeal and directed the Opponent, PIO to provide complete information with reference to her application dated 21/07/2014 within 10 days free of cost from the date of order.**
- 4. Since, despite of order of FAA, as no information was furnished to her within stipulated time, the Complainant vide her letter dated 07/11/2014 informed the PIO to furnish her required information in compliance of the order and Judgment passed by the FAA. Despite of the such reminder by the Complainant to Opponent No. 1, PIO, Opponent No. 1 PIO failed to provide her information.**

5. Being, aggrieved by the action of Opponent No. 1, PIO the present Complaint came to be filed before this Commission on 17/12/2014.
6. In pursuant to the notice of this Commission, Complainant appeared in person. The representative of Respondent No. 1, Shri Ashish Naik appeared during the initial one hearing and sought time to file reply. During the subsequent hearings neither the Opponent No. 1, PIO appeared nor his representative appeared on his behalf, nor reply came to be filed on their behalf.
7. After giving opportunity to Opponent to file reply the arguments of the Complainant were heard.
8. During the arguments the Complainant submitted that she has duly intimated dates of hearing twice to Opponent and inspite of that they failed to appear. She further submitted that she has not still received the information and that the Order of FAA had not been complied by the PIO, and as such she has filed the present Complaint.
9. I have scrutinize the records available in the file and also considered the arguments advanced by the Complainant. It is seen from the records that there was direction given by the FAA to furnish the documents within 10 days free of cost. The Opponent have not filed any reply nor has substantiate their case as such, the submissions made by the Complainant appears to be true and genuine. Once the order is passed by the FAA who is senior in rank then PIO, it was abundant duty of the Opponent to abide by his directions. On perusal of the order passed by FAA, it reveals that FAA directed the PIO to provide information as sought by him. However, in utter disregards to the said order PIO again failed to provide information sought for once the order is passed.
10. Further glaringly it can be noticed in the course of this proceedings that on receipt of the notice of this Complaint, no explanation or reason is furnish by the PIO for not providing information. It is apparent from the records that the Opponent No. 1, PIO has shown lack and negligence in his attitude towards discharge of his function as PIO. Material on record also shows that the PIO, Opponent No. 1 did not take any diligent steps in discharging responsibility under the RTI (Right to Information) Act. *The PIO's to always keep in mind that there services are taken by the Government to serve the people of state in particular and the people of country at large. They should always keep in mind that the objective and the purpose for which the said Act came into existence. The main object of RTI Act is to bring transparence and accountability in public authority and the PIO's are duty bound to implement the Act in true spirit.*
11. If the correct information was furnished to the Complainant in the inception she would have saved her valuable time and hardship cause to her in perusing the said Complaint. It is quite obvious that the Complainant have suffered lots of harassment and mental agony in seeking information. If

Opponent No. 1, PIO had taken prompt and given correct information such harassment and detriment could have been avoided.

12. Public Authority must introspect that non furnishing of the correct or incomplete information lands the citizen before FAA and also before this Commission resulting into unnecessary harassment of the common men which is socially abhorring and legally impermissible, therefore some sought of compensation helps in caring this social grief
13. There is delay of about 1 year and 10 months. The Opponent despite of reminders after the order of FAA have failed and deliberately neglected to provide required information which is again to the contrary to the mandate of RTI Act.
14. On perusal of the Complainant, it is also seen that application was also made on 10/11/2014 by the present Complainant to the Opponent No. 1 seeking:-
  - a. certified copies of this authorization letter or power of Authority which is given to another person by the Sarpanch, Deputy Sarpanch and all other Panch Memberes to signed on salary slip and collect their salary during the period of the year 2012 till the date of September 2014
  - b. certifies copies of the leave letters given by the Sarpanch, Dy. Sarpanch and all other Panch Members to remain absent for the monthly and the fortnight meeting held at the Panchayat from the year 2012 to September 2014.

The said was replied by the Opponent on 29/11/2014. If the Complainant was not satisfied with the said information she was required to file 1<sup>st</sup> Appeal under section 19 (1) of the RTI Act before coming in complaint.

15. While dealing with similar facts, the Hon'ble Apex Court in the case of ***Chief Information Commissioner and another v/s State of Manipur and another (civil Appeal No. 10787-10788 of 2011)*** has observed at para (35) thereof as under:

*“Therefore, the procedure contemplated under [Section 18](#) and [Section 19](#) of the said Act is substantially different. The nature of the power under [Section 18](#) is supervisory in character whereas the procedure under [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. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through [Section 18](#) is contrary to the express provision of [Section 19](#) of the Act. It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory*

*procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876)1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden.”*

The rationale behind these observation of apex court is contained in para (37) of the said Judgment in following words.

*“ 37. We are of the view that section 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies, one cannot be substitute for the other.”*

Again at para (42) of the said judgment their lordship have observed.

*“42. 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. There is no such safeguard in [Section 18](#). Apart from that the procedure under [Section 19](#) is a time bound one but no limit is prescribed under [Section 18](#). So out of the two procedures, between [Section 18](#) and [Section 19](#), the one under [Section 19](#) is more beneficial to a person who has been denied access to information.”*

- 16.**In the High Court of Karnataka At Bangalore dated in writ Petition No. 19441/2012 and Writ Petition Numbers 22981 to 22982/2012 C/W Writ Petition No. 24210/2012 and Writ Petition Numbers 40995 to 40998/2012 (GM-RES) Between M/s Bangalore Electricity Supply Company Limited. V/s. State Information Commissioner, Karnataka information Commission. has held that *“information Commissioner has got no powers under section 18 to provide access to the information which has been requested for by any person and which has been denied and that the remedy available would be to file an Appeal as provided under section 19 of the RTI Act”*
- 17.**By applying the same ratio, this Commission cannot entertains complaint with regards to application dated 10/11/2014.
- 18.**In the circumstances considering the conduct of PIO with regards to application of Complainant dated 21/07/2014 I find that this is the case were the request of the Complainant for the grant of Penalty and compensation to be genuine as such it would be appropriate that the Opponent No. 1 PIO is directed to give the reasons as to why this Commission should not impose penalty and compensation as prayed by the Complainant .

19. In the above circumstances following order is passed:-

**ORDER**

- a) Issue notice to Opponent No. 1-PIO to show cause why penalty and disciplinary proceeding should not be initiated against him for his dereliction of duties
- b) Issue notice to Opponent No.1 PIO to show cause why he should not be made to compensate the Complainant for the inconvenience hardship and mental agony caused to him
- c) Opponent No. 1 is hereby directed to remain present before this Commission on 15<sup>th</sup> November, 2016 at 3.30. p.m. alongwith written submission showing why penalty/ compensation/ disciplinary action should not be imposed/initiated against him. If no reply is filed by the Opponent No. 1-PIO it shall be deemed that he has no explanation to offer and further orders as may be deemed fit shall be passed.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Pronounced in the open court.

**Sd/-**  
**(Ms. Pratima K. Vernekar)**  
State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa