GOA STATE INFORMATION COMMISSION

Kamat Towers, Seventh Floor, Patto, Panaji, Goa

Complaint no.142/SIC/2010

Mrs. Sanyogita Shetye
C/o Shri Kashinath Shetye

R/o Bambino Bldg.

Ribandar –Goa ------Complainant

V/S

Public Information Officer,
Commissioner of Commercial Taxes,
Panaji-Goa ---------Opponent

CORAM :

Shri Prashant S.P. Tendolkar, State Chief Information Commissioner,
Smt. Pratima K. Vernekar, State Information Commissioner,
Shri Juino De Souza, State Information Commissioner.

DECIDED ON:27/5/2016

1. This order deals with the issue of maintainability of the present Complaint in the backdrop of the judgment of the Hon'ble Supreme Court of India dated 12/12/2011 in Civil Appeal Nos. 10787-10788 of 2011***(Chief Information Commissioner and another v/s State of Manipur and another).***

2. On scrutiny of the records of this commission it was found that there are several files pertaining

to complaints pending since 2008. It was further observed that during the individual hearings of such complaints, most of the complainants have remained absent continuously. Also PIOs have challenged the maintainability of such complaints before the commission as no first appeals were filed.

As a larger intricate legal issue of maintainability of such complaints without first appeal, was involved in several matters, this commission felt it necessary to constitute full bench of the commission to hear such issue. Accordingly CIC constituted full bench of the commission comprising of SCIC and both SICs. All the complaints were heard in a common hearing on 20/4/2016.Accordingly this complaint being one involving same was also heard in the said hearing.

FACTS:

3) The relevant facts that arise herein for the purpose of deciding the maintainability is that the complainant herein filed application, dated 30/6/2010, u/s 6 of the Right to Information Act 2005 (RTI Act) seeking certain information. As the information sought was not furnished, the complainant contends that the information is rejected as contemplated u/s 7 of the Act.

4) Being aggrieved by such rejection, the Complainant herein filed complaint before this Commission as contemplated u/s 18 of the RTI

Act seeking several prayers more particularly seeking information as sought as/also for imposition of penalties on PIO.

CONTENTIONS OF THE PARTIES:

5) Shri Kashinath Shetye, Complainant in some of the complaints, in his submissions in support of maintainability, stated that section (18) of the RTI Act confers powers on the Commission to receive and inquire into a complaint from any person who becomes entitled to file such Complaint when circumstances as enumerated in 18(1)(a) to (f) arise. According to him such circumstances arise even before the circumstances for filing appeal occur.

By referring to the judgment passed by Apex court in the case of *Chief Information Commissioner v/s State of Manipur,(supra)* he submitted that the facts therein are different and not applicable herein and hence according to him is not applicable in the present proceedings.

By further referring to section (19) of the RTI Act he submitted that the complainant has been granted option to file either an appeal or a complaint. According to him under Sec.(11)(4) of the Act, third party has been granted powers only to file appeal and the act does not provide relief of complaint to third parties.

By relying on the Judgment of Hon'ble High Court of Delhi in the case of *J.R. Mittal V/S*

CIC (W.P.(C) 6755/2012 and by referring to paras (30) and (37) therein, he submitted that notwithstanding the right of the aggrieved party to file first appeal, the complaint is maintainable.

While concluding his arguments he submitted that the First Appellate Authority is ineffective and only supports the PIO and are hand in glove with PIO and hence it necessitates the filing of complaints to the commission.

6) Dr. Ketan Govekar, representing some of the complainants, by adopting the submissions of Shri Kashinath Shetye, also added that the PIO in their reply, in addition to furnishing information are also liable to mention the details of Appellate Authority as also intimate the amount of fees payable. As the PIOs fail in such gestures the Complainants lands before this Commission without going to first appellate authority.

7) Shri Mahesh Kamat, Complainant in some of the proceedings, in support of the maintainability of the complaint and joining above arguments, submitted that the Complaints were filed before the Commission prior to the judgment of the Apex court as well as the Hon'ble High Court and hence said rulings cannot have retrospective effect. According to him the filing of Complaints without exhausting First Appeal was never objected to by the Commission and hence the same cannot be objected now.

8) Considering the arguments on behalf of the complainants, the core contentions on behalf of the complainants is that Section(18) and Section(19) offer two alternate, separate and independent remedies to an information seeker and has the option of approaching the State Commission either directly by way of a Complaint under Section 18 or by way of second appeal under Section 19, after exhausting the remedy of first appeal. According to them the two Sections are mutually exclusive and independent of each other and compelling the seeker to mandatorily approach the first appellate authority would make Section 18 redundant. The two being independent Sections, with two independent routes; it is the choice of an information seeker to choose the forum. The Complainants in other matters adopted the submissions as made above in support of maintainability of complaints and submitted that the complaints which are filed u/s 18 of the RTI Act are maintainable even without exhausting the remedy of first appeal as provided u/s 19(1) of the RTI Act.

It is also the contention of the complainants that the judgment of Apex Court in case of State of Manipur (supra) has no retrospective effects.

9) Per contra, while objecting the maintainability of the complaints filed u/s 18 of the RTI Act

without availing remedy of the first appeal u/s 19(1) of the Act, Adv (Mrs.) H. Naik by drawing our attention to section (18) of the act submitted that there cannot be any presumption that the F.A.A shall deny the information. According to her if the grievance can be redressed in complaints there was no need for provision of appeal. She further submitted that the complaints are filed only for the purpose of causing harassment to PIO and not for the main cause of receiving information.

10) In support of the above argument, Adv. K. L Bhagat, by relying on the decision of the Hon'ble High Court of Goa bench in ***Writ petition No. 739/2010 (Goa cricket Association V/S State of Goa)*** submitted that the right to complaints u/s 18 of the Act can be invoked in cases which do not include refusal by PIO to disclose the information and the remedy in cases of refusal is by way of appeal only. He submitted that on this issue the law is also already laid by the Hon'ble High Court in the case of *Reserve Bank of India v/s Rui Fereira CRA No. 113 of 2004.* By referring to para (8) of the said judgment he submitted that the complaint can be filed only if the Circumstances as described in Sec 18(1)(a) to (f) exist. In the present case the request for information is either rejected or refused and hence only an appeal u/s 19 of The Act would lie.

He further submitted that information cannot be furnished in complaint.

11) Joining the issue with Adv. Mrs. Naik and Adv. K. L. Bhagat, Adv. A Mandrekar submitted that section (18) of the Act does not prescribe time limit for filing complaints whereas section (19) mandates a period of 30 days with maximum of 90 days for filing appeal. According to him the prayer for seeking information through the complaint would circumvent the provisions of limitations as prescribed under section 19 of the Act.

FINDINGS:

12) We have perused the records. We have also considered the arguments advanced by the parties and the advocates in support of the maintainability as also objecting the maintainability of the complaints without filing the first appeals. The issue rests on the interpretation of section 18 and 19 of The Act, whether they are exclusive or complementary to each other.

13) On close scrutiny of the facts, it is seen that the complainant had filed his application u/s 6 of the RTI Act, seeking certain information. As per the complaint the said application resulted in refusal of information. Being aggrieved by such refusal the complainant has filed the present

complaint filed u/s 18 of the RTI Act to this Commission.

In the present complaint, besides other reliefs, the Complainant has also sought the direction to furnish the information as sought for by application u/s 6 of the RTI Act.

14) Section 18 of the Act opens with the words *"Subject to the provisions of this Act-----",* which implies that this section operates in consonance with and not in conflict with or independent of the rest of the provisions of the Act. Thus section 18, as per the Act cannot be said to be an independent section but is subject to the provisions of this Act. In other words section 18 does not enjoy an overriding status over other provisions more particularly section 19.Hence both these sections are to read together.

15) This Commission has dealt with a similar issue in Complaint No.171/SIC/2010.Complainant therein had filed a complaint against the order of PIO rejecting his request by invoking exemption u/s 8(1)(e) of the RTI Act. The SIC then, by his order, dated 24.06.2010 had held that in the said situation the proper course of action for the complainant therein would have been to file first appeal and adjudicate the propriety of refusal before first appellate authority.

16) Contrary to this ratio, this commission, in a complaint filed by one Mr. Rui Fereira against Reserve Bank of India, directed the PIO to furnish the information sought though the complainant therein had not filed the first appeal against the order of PIO.

Said order of this commission landed before the Hon'ble High Court being *CRA No.113 of 2004***,** and the Hon'ble High court while dealing with such issue at para (8) thereof has observed:

> *"8. Further, the question that arises is whether the Commission would have entertained a complaint from respondent no.1 directly under Section 18 when respondent no.1 had failed to file an appeal against the order of the PIO of the Co-operative Bank rejecting the request and against the order of the Reserve Bank of India, refusing the request on the ground that the information is protected by Section 8(1)(a) of the Act. Section 18 confers power on the State Information Commission to receive and inquire into a complaint from any person in the nature of supervisory in the circumstances referred to in that Section. Thus the State Information Commission may entertain a complaint from any person who has been unable to submit a request to the PIO*

because no such officer has been appointed or if the PIO has refused to accept his application for information or an appeal under the Act; or whether the person has been refused access to any information requested under the Act or whose request has not been responded within the time specified under the Act etc. The case of respondent no.1 does not fit into either of the circumstances referred to under Section 18(1)(a) to (f). The PIO of the Co-operative Bank and the RBI have rejected the request for information after considering the request in accordance with law. The Act provides for appeals against such orders vide Section 19. Section 18 commences with the words:

1) Subject to ……."

[***Reserve Bank of India v/s Rui Ferreira and others (2012(2)Bom.C.R.784)]***

17) In another case, 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."*

18) Contrary to the above ratio this Commission in the Complaint No 518/SCIC/2010 decided on 07/10/2010 filed before it u/s 18 of the RTI Act, had directed the PIO to disclose the information. Said order also was challenged before the Hon'ble High Court of Bombay at Goa in ***Writ Petition No. 739 of 2010. (Goa Cricket Association v/s state of Goa and Others).*** In said petition several contentions were raised one out of the same was that if the complainant was aggrieved by rejection of his application by PIO remedy available to the Complainant was to file an appeal before first appellate authority. The Hon'ble High Court after considering the Judgments in the case of Reserve Bank of India v/s Rui Ferreira and others (supra) as also in CIC v/s State of Manipur (Supra) reversed the said order of CIC with observation :

> *" 7. The fact situation in the present case is almost identical and though we may not castigate the decisions in the same harsh words, the same principle would apply. Section 18 of the Act confers jurisdiction on the State Information Commission to entertain the complaint in cases which do not include the case of refusal by the public authority to disclose the information. The remedy available to the complainant, in such a case, therefore, is by way of First Appeal before the First Appellate Authority".*

19) On careful analysis of the above decisions of the Hon'ble High Court and the Hon'ble Supreme court, nothing remains to be discussed further. The issue regarding maintainability of the complaints u/s 18, seeking information, without filing appeals u/s 19(1) of The RTI Act, as involved herein is laid at rest and the position of law is laid down as above. The facts involved in the case in hand and those before the Hon'ble High Court and the Hon'ble Supreme court are identical.

20) Nowhere it is suggested that an information seeker cannot approach the Commission under Section 18 but only after he exhausts the alternate and efficacious remedy of First Appeal, before approaching the higher forum. Judicial institutions operate in hierarchical jurisprudence. An information seeker is free to approach the Commission by way of a Complaint under Section 18, if his grievance is not redressed, even after the decision of the First Appellate Authority. As held above, Section 18, is' *subject*' to provisions of Section 19 and Section 19 provides for an efficacious remedy to the fundamental requirement of information under the Act. Such a remedy of filing first appeal would also be in conformity with the provisions of section 19(5) of the Act and grant a fair opportunity to the PIO, to

prove that the denial of request for information was justified. Seeking penalty and information by way of complaint, without first appeal, would be violative of such rights.

21) The second contention of the complainant is that as the ruling of the apex court in the case of State of Manipur (supra) came in operation after filing of the present complaints and hence has no retrospective effect.

We are unable to accept this contention. The RTI Act came in force in 2005. The Hon'ble Apex Court by said ruling has interpreted the provision of the said act as was framed by the legislation. Hence the ratio of the Apex court would bind all the proceedings under the Act both filed after or before the said judgment.

22) In the circumstances we hold that the present complaint filed against rejection of the application for information is not maintainable. Considering the submissions on behalf of the complainant, that the present complaint is being proceeded before this commission under the bonafide belief that such complaints were taken up for hearing under a belief that such complaints are maintainable, we find that the interest of the complainant is required to be protected. We therefore proceed to dispose the present complaint with the following:

ORDER:

20)Complainant stands closed. Complainant is granted liberty to file first appeal under section 19(1) of The RTI Act in respect of the rejection/refusal of his request for information vide his application, dated 30/6/2010,within forty-five days from the today. If such an appeal is filed, the first appellate authority shall decide the same on merits in accordance with law, without insisting on the period of Limitation. The rights of the complainant herein to file complaint in case the complainant is aggrieved by the order of the first appellate authority in such appeals, are kept open.

Parties to be notified. Copy of this order shall be furnished to the parties free of cost. Proceedings stands closed.

Pronounced in the open court.

Sd/-
(Shri Prashant S.P. Tendolkar)
State Chief Information Commissioner,

Sd/-
Smt. Pratima K. Vernekar,
State Information Commissioner,

Sd/-
Shri Juino De Souza,
State Information Commissioner.