

GOA STATE INFORMATION COMMISSION

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

CORAM: Shri Juino De Souza State Information Commission

Complaint No. 18/SIC/2012

Engr. Rabindra A. L, Dias,
Cujira, St. Cruz,
Tiswadi – Goa.

..... Complainant

v/s

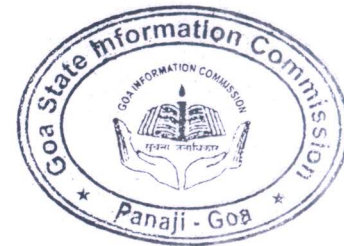
1. Public Information Officer,
O/o the Dy. Collector & SDO,
Collectorate Bldg.,
Margao, Salcete – Goa

..... Respondent

Relevant emerging dates:

Date of Hearing : 12-07-2016

Date of Decision : 12-07-2016



ORDER

1. Brief facts of the case are that the Complainant had vide his application dated 28/06/2011 sought certain information from the Respondent PIO. The information pertains to a case SDO/SAL/RTI/APPL/6/2011/38 and the complainant has also asked for suo moto inspection of records. The details asked are as follows: Roznama /Proceeding Sheet (Entire).
 - a) Notice recorded in the case acted above.
 - b) Notice dated 03/01/2011 issued to the Appellant/Respondent.
 - c) Order pronounced in Court.
 - d) Replies of the Respondent.
 - e) Letter of Eng. Rabindra A.L. Dias dated 20/01/2011.
 - f) Letter of Eng. Rabindra A.L. Dias dated 20/05/2011
 - g) Any other correspondence pertaining to the matter in question.
2. It is the case of the complainant that the PIO has refused to supply information and also suo moto inspection and which is why he has come directly in a complaint before the commission under section 18 and in his prayer has sought penalty and other such reliefs.

3. During the hearing the Complainant is absent. It is seen from the roznama that he has remained absent for three hearings viz 21/04/16, 05/05/2016 and today 12/07/2016. The Complainant has sent a communication dated 4TH July 2016 requesting to postpone the case as he has to attend another matter in the office of Addl Collector at Margao and which appears a flimsy excuse to keep the matter alive without justifiable reason as no evidence is enclosed and which the Commission cannot entertain as this is an old matter pertaining to the year 2012 and has to be disposed on priority, besides the Respondent PIO Ajit Panchawadkar Dy Collector along with the former PIO Johnson Fernandes , Addl. Collector South are both present in person and their time cannot be wasted by adjournment.
4. No doubt there is a detailed reply filed by the Respondent PIO denying the allegations and stating that the Complaint is misconceived, untrue and full of distorted facts and is filed on 23/01/2012 which is beyond the prescribed limitation period i.e after six months from filing the RTI application dated 28/06/2011.
5. But before going into the merits of the case, the Commission is seized with the fact that the Complainant has without exhausting the remedy of filing a First Appeal directly filed a complaint and hence the question of maintainability of the complaint without filing the first appeal arises for determination.
6. The issue rests on the interpretation of section 18 and 19 of the RTI Act 2005, whether they are exclusive or complementary to each other. 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 complainant the said application resulted in refusal of information and being aggrieved by such refusal the complainant has filed the present complaint u/s 18 of the RTI Act to this Commission.
7. 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.

In other words section 18 does not enjoy an overriding status over other provisions more particularly section 19. Hence both these sections are to be read together.

8. This Commission has dealt with a similar issue in Complaint No.171/SIC/2010 where the complainant therein had filed a complaint against the reply of the 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.
9. Contrary to this ratio, this commission, in a complaint filed by one Mr. Rui Ferreira 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. The 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)]

10. 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."

11.

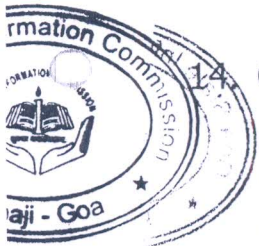
The rationale behind these observation of apex court is contained in para (37) of the said Judgment in following words.

" 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."

12. 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.
13. 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".



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 complaint 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.

15. 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.

16. 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.
17. In the circumstances I hold that the present complaint filed against rejection of the application for information is not maintainable. I therefore proceed to dispose the present complaint with the following:

ORDER

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 28/06/2016, within sixty days from the date of this order latest 14th September 2016 by 3.00pm. 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 which stand waived. The rights of the complainant herein to file complaint thereafter in case the complainant is aggrieved by the order of the first appellate authority in such appeals, is kept open.

All Proceedings in the complaint case are also 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

