

GOA STATE INFORMATION COMMISSION

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

CORAM: Shri Juino De Souza: State Information Commissioner

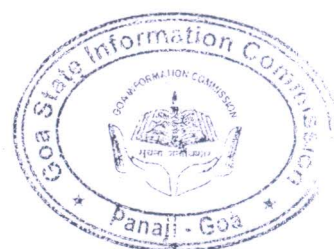
Complaint No.25/SCIC/2012 87e

Andrew Gonsalves,
H. No. 573,
Corosco, Parra, Bardez – Goa.

.....Complainant

v/s

Public Information Officer,
Superintendent of Police
(Immigration),
Foreigners Branch,
Panaji – Goa.



..... Respondent

Relevant emerging dates:

Date of Hearing : 05-10-2016

Date of Decision : 05-10-2016

ORDER


1. Brief facts of the case are that the Complainant had vide an application dated 09/11/2011 sought certain information from the Respondent PIO. The information sought is regarding the Arrival and Departure of one Smt. Juliana Gonsalves, Holder of Passport No.H-882659 which was issued at Panaji, on 21/10/2008 and valid upto 20/10/2018.
2. It is seen that the PIO had replied vide letter dated 18/10/2011 and there was also another letter sent to the Complainant on 07/12/2011, however not being satisfied with the reply of the PIO, the Complainant Andrew Gonsalves subsequently filed a direct complaint with the Commission on 03/02/2012.
3. During the hearing the Complainant Andrew Gonsalves is absent despite advance notice without intimation to this Commission. It is seen from the Roznama that on the hearing held on 20/06/2016 the Complainant was represented by one Savio Britto who does not have any letter of Authority with him.

4. Savio Britto however requested the Commission to allow him to represent the Complainant stating that he will file the letter of authority at the next hearing and accordingly the matter was adjourned. It is further seen that on the next date hearing 11/8/2016 both the complainant and his representative are absent.
5. During the hearing held on 19/08/2016 once again the representative of the Complainant Savio Britto put up an appearance with a Xerox copy of an old letter of authority dated 17/07/2012 signed by the Complainant Andrew Gonsalves. When it was pointed out that he has to file a fresh letter of authority of the year 2016, he again informed the Commission that he will definitely bring the same at the next hearing and matter was again adjourned to 05/11/2015.
6. At the hearing held today i.e 05/11/2016 both the Complainant and his representative Savio Britto are absent. The Respondent PIO is represented by Shri Harish Vaigankar PSI, presently posted FRRO is present and requests the Commission to proceed with the matter as already three adjournments have been given.
7. The Representative for the PIO submits that all information was furnished to the Complainant in the year 2011 by the SP immigration. Vide letter bearing outward No. SP/IMMG/133/2011 dated 18/10/2011 which was received by F. Fernandes and another letter bearing No.SP/IMMG/167/2011 dated 07/12/2011 was sent and which was received by the Complainant's sister Mrs. Rosalina Gonsalves, both letters was served through Mapusa Police station.
8. The Representative for the PIO further submits that the Complainant Andrew Gonsalves has continuously remained absent and his representative Savio Birtto does not have any proper letter of authority. It is also submitted that Bureau of immigration (BOI) has taken over charge of Immigration at Goa airport since 25/06/2012 and BOI is under Intelligence Bureau (IB) which is exempt under the RTI act. ...3



9. Finally it is submitted that the Complainant cannot approach the Commission directly without exhausting his remedy of first Appeal and that if the Complainant was aggrieved with information furnished by the PIO he should have approached the First Appellate authority (FAA) under 19(1). A detailed reply signed by the Foreigners Regional Registration Officer (FRRO) dated 05/10/2016 is furnished before the commission which is taken on record.

10. The Commission on perusal of the material on record indeed finds that there is no First Appeal filed with the First appellate authority who is a senior officer to the PIO. It is true that if the Complainant was not satisfied with the reply of the PIO then he should have first exhausted his remedy under First Appeal and after exhausting the same subsequently approached the commission if he was still aggrieved.



11. 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."

"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. The Commission is of the view that nowhere it is suggested that an information seeker cannot approach the Commission under Section 18 but it is only after he exhausts the alternate and efficacious remedy of First Appeal, before approaching the higher forum directly as Judicial institutions operate in hierarchical jurisprudence. The information seeker is free to approach the Commission thereafter by way of a Complaint under Section 18, if his grievance is still not redressed after the decision of the First Appellate Authority.

13. As held, 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.

14. In the circumstances the present Complaint is not maintainable as there is no First appeal filed and as such the Complaint case stands dismissed. The Complainant however is at liberty to file a proper First Appeal under section 19(1) of the RTI Act within forty days from the date of this order if he so desires. If such an appeal is filed, the FAA shall decide the same on merits in accordance with law, without insisting on the period of Limitation which accordingly stands waived. The rights of the Complainant to thereafter file either a Complaint u/s 18 or Second Appeal u/s 19(3) if aggrieved is kept open. **With these directions the Complaint case stands disposed.**

All proceedings in the Complaint case stand closed. Pronounced before the parties present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the Order be given free of cost



Under Secretary cum Registrar
Goa State Information Commission

Sd/-
(Juino De Souza)

State Information Commissioner