

**GOA STATE INFORMATION COMMISSION**  
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

**CORAM: Shri Juino De Souza State Information Commissioner**  
**Complaint no.48/SIC/2011**

Shri Nilesh D. Patekar,,  
370, Oshalbag, Dhargal,  
Pedne – Goa.

..... Complainant

**v/s**

Public Information Officer,  
Secretary, V. P. of Dhargal,  
Pedne Goa.

.... Respondent/Opponent

**Relevant emerging dates:**

Date of Hearing : 11-08-2016

Date of Decision : 11-08-2016



**ORDER**

1. Brief facts of the case are that the Complainant vide an application dated 13/1/2011 sought information on 3 points regarding 21<sup>st</sup> Century Iron & Steel established at Dhargal in Pernem Taluka with respect to NGC of Panchayat for establishment purpose, resolution of Panchayat for the said plant for establishment purpose and documents submitted by the said plant for establishment purpose.
2. It is seen that no reply was furnished by the Respondent even after the expiry of the mandatory 30 days period and which is why the Complainant has filed a direct complaint with the commission praying that the Respondent /Opponent PIO be directed to furnish information and also other reliefs of fine.
3. During the hearing the Complainant is absent despite advance notice issued by RPAD without intimation to this Commission. It is seen that he has remained continuously absent since four hearings on 19/02/2016, 12/04/2016, 19/05/2016, 23/06/2016 as well as today. The Respondent PIO Mr. Deeraj Govenkar, secretary V.P. Dhargal, Pedne is present in person.

4. The Respondent PIO submits that the case is of the year 2011 and he was not the PIO at that point of time. The PIO also submits that the RTI application itself is very vague and does not mention any particulars of date, etc. It is further submitted that if the RTI application was rejected then the Complainant should have filed a First appeal instead of directly filing a complaint case with the Commission which is not maintainable.
5. The Commission on scrutiny of the file observes that there is no first appeal filed and agrees with the submission of the PIO that the Complainant should have first exhausted his remedy of first appeal and then approached the commission if he is still aggrieved.
6. 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."*

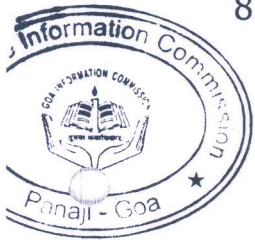


7. The Commission is of the view that nowhere it is suggested that an information seeker cannot approach the Commission under Section 18 but only after he exhausts the alternate and efficacious remedy of First Appeal, before approaching the higher forum. Judicial institutions operate in hierarchical 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.

8. 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.

9. In the circumstances the present Complaint filed against rejection of the application for information is not maintainable. It is open for the Complainant to file first appeal under section 19(1) of the RTI Act in respect of the rejection/refusal of his request for information within forty days from the date of this order. 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. The rights of the Complainant to thereafter file complaint u/s 18 with the commission if aggrieved is kept open. With these directions the Complaint case is closed.

All proceedings in the Complaint case stand 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