

GOA STATE INFORMATION COMMISSION

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

CORAM: Shri Juino De Souza State Information Commissioner
Complaint no139/SCIC/2012

Luel Fernandes,
136, Cotta Chandor,
Salcete-Goa.

..... Complainant

v/s

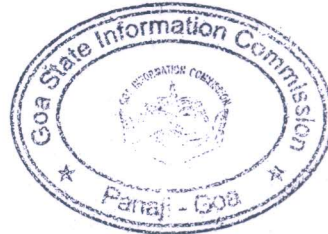
1. Public Information Officer,
O/o Sub-Registrar,
IInd Floor Osia Complex S.G.P.D.A.,
Margao-Goa.

.... Respondent/Opponent

Relevant emerging dates:

○ate of Hearing : 10-08-2016

Date of Decision : 10-08-2016



ORDER

1. Brief facts of the case are that the Complainant vide an application dated 31/07/2012 sought certain information from the Respondent/ Opponent PIO office of Sub-Registrar, SPDA, Margao. It is the case of the Complainant that he did not receive any reply from the PIO and which is why he has filed a direct complaint case with the commission on 17/10/2012.
2. During the hearing the Complainant Luel Fernandes is present in person. The Respondent PIO Shri. R.L. Pednekar, District Registrar (South) is also present in person. The Respondent PIO at the outset submits that the complaint is not maintainable as the complainant has not exhausted his remedy of filing First Appeal under 19(1) and as such the commission should dismiss the complaint.
3. The Respondent PIO also submits that the information sought in RTI application pertains to Land Registration No. 24942 of new series of Chandor Village and which information is more than 60-70 years old and the same are mutilated.

4. It is further submitted that a Reply bearing no. CRSR/SALCETTE/1782/2012 dated 18/12/2012 was sent by the PIO stating that the concerned land registration book is mutilated and that the office will permit inspection of the said land registration book on any working day during office hours so as to satisfy the Complainant of the same.
5. The Complainant in his submission questioned as to how it is possible that the office of the Sub-Registrar who is the custodian of records make a statement that his own records are mutilated and destroyed and whether such information can be of any use and consumption for the complainant.
6. The Commission on perusal of the records finds that indeed there is a reply given by the PIO being letter no CRSR/SALCETTE/1782/2012 dated 18/12/2012 informing the Complainant to take inspection of the mutilated file and records on any working day and which has not been carried out by the Complainant. It is also seen that there is another reply dated 18/01/2012 filed by the PIO before the commission confirming that the facts were communicated to the Complainant and that there was no malafide intention to withhold any information.
7. The Commission also finds that there is no First Appeal filed with the First appellate authority who is a senior officer to the PIO and agrees with the submission of the PIO that if the Complainant was not satisfied with the reply of the PIO then he should have first filed the first appeal and after exhausting this remedy of first appeal then approached the commission if he was still aggrieved.
8. 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."

9. 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.
10. 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.

11. In the circumstances the present Complaint filed against the reply of the PIO to the RTI application is not maintainable. It is open for the Complainant to file proper 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 he so desires.
12. 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) with the commission 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 who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the Order be given free of cost.

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(Juino De Souza)
State Information Commissioner

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