

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

CORAM: Shri Juino De Souza : State Information Commissioner

Complaint no.141/SIC/2012) 683

Advocate Gautam N. Pednekar ,
O/o F-7, First Floor, Elzira Commercial
Complex,
Opposite Axis Bank, Angod,
Mapusa, Bardez-Goa

..... **Complainant**

v/s

1. Public Information Officer,
Executive Engineer (Training),
O/o Chief Electrical Engineer,
Electricity Department
Vidyut Bhavan, Panaji-Goa



.... **Respondent/Opponent**

Relevant emerging dates:

Date of Hearing : 31-08-2016

Date of Decision : 31-08-2016

ORDER

1. Brief facts of the case are that the Complainant vide an RTI application dated 02/08/2012 sought certain information from the Respondent PIO under section 6(1) of the RTI Act. 2005. The information pertains to seeking information on 8 different points about one Electrical Engineer by name Mr. Ulhas Sonu Kerkar, aged 61 years, resident of Xelpem, Mausea posted as the Executive Engineer, Div-VI Electricity Department at Mapusa.
2. The information pertains to a complaint about refusal to accept legal notice without valid reason, rude behavior, to furnish birth certificate and qualification, appointment details in Govt. service and other such information about Mr Ulhas Sonu Kerkar.
3. It is the case of the Complainant that the Respondent PIO refused to entertain the RTI application and it is alleged that the RTI application was not allowed to be inwarded and as such the Complainant posted the said RTI application dated 03/08/2012 vide registered A.D. on 04/08/2012.

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4. It is also the case of the Complainant that the postal A.D. letter was returned with the remark 'refused' and being aggrieved the Complainant has filed a direct complaint with this Commission on 25/10/2012 praying that directions be issued to the PIO to furnish the information and to conduct an enquiry and to initiate disciplinary action.
5. During the hearing the Complainant is absent without intimation to Commission. It is seen from the Roznama that he continuously remain absent on three previous occasions on 31/05/2016, 04/07/2016 and 18/08/2016 as well as today. The Respondent PIO is represented by Shri Damodar Naik Asst. Eng alongwith Suryakant Sawant, UDC are present in person.
5. The Respondent PIO submitted that the information sought pertained to personal information and does not fall under the purview of the RTI act 2005. The PIO also refuted the allegation of the Complainant that the RTI application was not allowed to be inwards while stating that all RTI applications are received by clerk in the inward section compulsory and there is no question of refusing.
6. It is also argued that the Complainant sent a Registered letter in personal name of Mr. Ulhas Kerkar and since it was not addressed in the name of the PIO of the Public Authority and it is likely that the acceptance of the same in personal name was refused by the said person Mr Ulhas Sonu Kerkar. The Respondent PIO finally 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.



7. The Commission on perusal of the records finds that indeed the information sought by the complainant is pertaining to personal information about one Mr Ulhas Kerkar who is working with the Public Authority.
8. 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 refusal of information by 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.
9. 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."

10. The Commission is of the view that nowhere it is suggested that an information seeker cannot approach the Commission under Section 18 in a Complaint Case but it is only after he exhausts the alternate and efficacious remedy of First Appeal, before approaching the higher forum.
11. 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.
12. 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.
13. In the circumstances the present Complaint filed against the refusal of information by 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 fifty days from the date of this order if he so desires.

14. 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 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.

(Juino De Souza)
State Information Commissioner

Under Secretary cum Registrar
Goa State Information Commission

