

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

CORAM: Shri Juino De Souza: State Information Commissioner
Complaint No:144/SCIC/2012

Mr. Sudesh N. Borkar ,
S/o. Mr. Narsinh Borkar,
Occupation –Advocate,
With Office-S-08, 'D' Bldg.,
Apna Bazar Complex,
Behind Collectorate Office
Margao –Goa.

..... Complainant

v/s

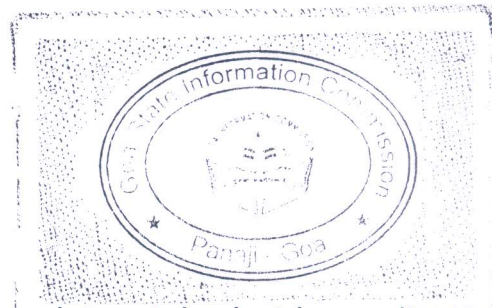
Public Information Officer,
Mamlatdar of Ponda,
Ponda Taluka
Ponda-Goa

..... Respondent

Relevant emerging dates:

Date of Hearing : 22-08-2016

Date of Decision : 22-08-2016



ORDER

1. Brief facts of the case are that the Complainant had vide application dated 05/09/2012 sought certain information from the Respondent PIO. The information pertains to 14 mutation cases of different villages and the PIO vide reply MAM/PON/RTI/2012/1740 dated 04/10/2012 informed the Complainant that the said files are not traceable and efforts are being made to trace out the same.

2. In the meanwhile it is seen that in the year 2013 the said file were traced and the Complainant was once again informed vide another letter no. MAM/PON/TI/2011/16 dated 04/01/2013 to come and collect the necessary information. The said letter was hand delivered and has been acknowledged by the Complainant, however the Complainant by that time had already filed a direct complaint with this Commission prior to receiving the said letter on 30/10/2010 praying for compensation for not furnishing information and other such reliefs of costs, etc.

3. During the hearing the Complainant Mr. Sudesh N. Borkar is absent without intimation to this Commission. It is seen from the roznama that he has remained continuously absent since 26/03/2013. The Respondent PIO, Shri Abhir Hede, Jt. Mamlatdar Ponda Taluka is present in person.
4. The Respondent PIO submits that the Complainant without filing the First Appeal has directly approached the commission with a Complaint and that the same is not maintainable. It is further submitted that after the said file was traced and communication was sent to the Complainant to come and collect the said information on payment of necessary fees, however the Complainant has not collected the same and perhaps is not interested in receiving the information.
5. The PIO finally submits that he is still willing to furnish information to the Complainant provided he pays the necessary fees as prescribed under the rules.
6. The Commission on perusal of the material on record including the Compliant memo and reply of the Respondent / Opponent finds that indeed a letter bearing no. MAM/PON/TI/2011/16 dated 04/01/2013 was sent by the PIO informing the Complainant to come and collect the necessary information and the letter was hand delivered and has been acknowledged by the Complainant. Yet the Complainant chose not to collect the information.
7. The PIO had earlier sent a communication bearing no MAM/PON/RTI/2012/1740 dated 04/10/2012 within the stipulated 30 days mandatory period informing that the files are not traceable and efforts are on to trace the file and as such the PIO cannot be faulted. The Commission also finds that the there is no First Appeal filed with the First Appellate Authority who is a senior officer to the PIO and that the Complainant has directly filed a complaint with the commission.

8. The Commission is of the considered view 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.
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 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. It is nowhere 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 as 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 and he is still feels aggrieved after the decision of the First Appellate Authority.
11. 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.

12. In the circumstances the present Complaint case is not maintainable. It is open for the Complainant to either approach the PIO and collect the information which has been kept ready after paying the necessary fees as prescribed under the rules within 40 days of the date of this order if he so desires and in such an event the PIO will extend full cooperation in furnishing the said information to the Complainant after collecting necessary fees as prescribed under the rules.

13. The Complainant is also 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) 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.

sdt

(Juino De Souza)

State Information Commissioner

[Signature]

**Under Secretary cum Registrar
Goa State Information Commission**