

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

CORAM: Shri Juino De Souza : State Information Commissioner

Complaint No. 154/SCIC/2012

Adv . Gautam N. Pednekar,
Office F-7, 1st floor,
Elzira Commercial Complex,
Opp. to Axis BANK, Angod,
Mapusa, Bardez –Goa

..... Complainant

v/s

1. Public Information Officer,
Executive Engineer (Trg),
O/o. Chief Electrical Engineer,
Electricity Department,
Panaji– Goa.



Relevant emerging dates:

Date of Hearing : 19-08-2016

Date of Decision : 19-08-2016

ORDER

1. Brief facts of the case are that the Complainant had vide his application dated 25/10/2012 sought certain information from the Respondent PIO, Under Secretary GA-II. It seen that the information sought is voluminous on 10 different points. The PIO vide letter No.35/1/2012/RTI-80/GAD-III/9692 dated 19/11/2012 transferred the application under Sec 6(3) of chapter II of the RTI Act 2005 to the PIO o/o Chief Electrical Engineer, Panaji- GOA.
2. The PIO, O/o Chief Electrical Engineer Office subsequently transferred the application to the Dy. Director of Administration of the same Public Authority under Section 5(4) of RTI Act and the said PIO vide letter dated 04/12/2012 informed the complainant that the desired information cannot be given under section 8(1) (j) and 8 (1)(e) of the RTI Act 2005 being a third party information and also as no larger public interest was served. Being aggrieved the Complainant thereafter directly approached this Commission without filing first appeal with the FAA i.e Suptd Eng. Circle II Electricity Dept.

3. During the hearing the Complainant is absent without intimation to this Commission. The Respondent PIO Shri J.S. Hiremath, Executive Engineer Electricity Dept. alongwith Mr. Damodar Naik, Asstt. Engineer are both present in person. The Respondent PIO submits that the information sought by the Complainant was in question form and also pertains to third party information and not in public interest as such the information was rejected Section 8 (1)(j) and 8(1)(e) of RTI Act, 2005.
4. It is also submitted that the Complainant has approached the commission directly without filing first appeal and as such the complainant is not maintainable. However if the Complainant wants any further assistance/cooperation from this office for inspection of the records/documents pertaining to the information in public interest the same shall be made available.
5. The Commission has perused the material on record including the Complaint memo, reply of PIO and observes that not all of the information sought falls under exemption category and pertains to third party. The Commission however finds that instead of rejecting the complete RTI application under Section 8 (1)(j) and 8(1)(e) of RTI Act, 2005 the PIO could have furnished part information which can be disclosed, however the commission is of the opinion that there was no malafide intention to withhold any information.
6. The Complainant has prayed that directions be issued to the PIO to furnish information and such directions cannot be given in a complaint case. The Commission also finds that there is no First Appeal filed with the First Appellate Authority (FAA) 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.



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."




8. 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.
9. 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.

10. 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.

11. 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.


Under Secretary cum Registrar
Goa State Information Commission


(Juino De Souza)
State Information Commissioner