BEFORE THE GOA STATE INFORMATION COMMISSION
Seventh Floor, Kamat Towers, Patto, Panaji, Goa.

Complaint No.28/SIC/2012

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

1)Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa.
2) Municipal Engineer,
Deemed PIO, Canacona Municipal Council,
Canacona Chaudi –Goa. ….. Opponent

Complaint No.29/SIC/2012

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

1) Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa.
2) Municipal Engineer,
Deemed PIO, Canacona Municipal Council,
Canacona Chaudi –Goa. ….. Opponent

Complaint No.168/SCIC/2011

Frezer Rodrigues,
Through the Power of Attorney,
Mrs. Maria P. Fernandes e Rodrigues,
R/o H. NO.1392(2)/Flat No.6,
Sunrise Apartment, Mazilwado,
Benaulim, Salcete-Goa. ….. Complainant

V/s

1) The Public Information Officer,
Mamlatdar of South Collectorate,
Margao-Goa.
2) PIO/Dipak Desai,
Dy. Collector & SDO Margao,
Salcete Margao-Goa.
3) Inward Clerk/Entry Clerk,
Dy. Collector & SDO ,
Salcete Margao-Goa. ….. Opponent

Complaint No.99/SIC/2011

Mrs. Severina P. Fernandes,
H. No.1392/A Bldg,
Majilwado Near Benaulim Panchayat,
Benaulim, Salcete-Goa. ….. Complainant

V/s

Public Information Officer,
Health Officer,
Primary Health Centre,
Cansaulim –Goa. ….. Opponent

Complaint No.199/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Complaint No. 200/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Polcie Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Complaint No.201/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Complaint No.202/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Complaint No.203/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Polcie Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Complaint No.204/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Complaint No.205/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Complaint No.206/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Complaint No.207/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Complaint No.208/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Complaint No.209/SCIC/2011

Shri Ashok Desai,
309, 3rd floor, Damodar Phase-II,
Nr. Margao Police Station,
Margao-Goa. ….. Complainant

V/s

Shri Pradeep S. Naik,
PIO, Chief Officer Canacona Municipal Council,
At Chaudi-Canacona-Goa. ….. Opponent

Shri Prashant S.P. Tendolkar, State Chief Information Commissioner,

DECIDED ON: 28/10/2016

O R D E R

1) As all the above Complaints involve a common issue regarding the maintainability of the complaints, they are dealt with by this **common order**. The issue involved in all these complaints is maintainability of the Complaint in the backdrop

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of the judgment of the Hon'ble Supreme Court of India dated 12/12/2011 in Civil Appeal Nos. 10787-10788 of 2011***(Chief Information Commissioner and another v/s State of Manipur and another).***

2) The facts that emerges from the records of these complaints are that the complainants filed application under section 6(1) of the Right to information Act 2005, (Act for short) from the PIO. The PIO failed to provide the required information and hence the complainant has approached this Commission with the present complaints seeking relief of penalty as also for a direction to furnish information as sought by the complainant.

3) The parties were notified but none appeared on behalf of the complainant or the respondents.

4) We have considered the records as also the provision of the RTI ACT. We have also considered the ratio laid down by the Apex court in the case of ***Chief Information Commissioner and another v/s State of Manipur and another (supra).*** The core issue that requires to be decided rests on the interpretation of section 18 and 19 of The Act, whether they are exclusive or complementary to each other.

5) On close scrutiny of the facts, it is seen that the complainants had filed their application u/s 6(1) of the Act, seeking certain information. As per the complaint the said application resulted in refusal of information interms of section 7(1) and (2) of the Act. Being aggrieved by such refusal the complainants have filed the present complaint u/s 18 of the Act to this Commission. Besides other reliefs, the Complainants have also sought the direction to furnish the information as sought for by application u/s 6 (1) of the RTI Act.

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6) Section 18 of the Act opens with the words *"Subject to the provisions of this Act-----",* which implies that this section operates in consonance with and not in conflict with or independent of the rest of the provisions of the Act. Thus section 18, as per the Act cannot be said to be an independent section but is subject to the provisions of this Act. In other words section 18 does not enjoy an overriding status over other provisions, more particularly section 19.Hence both these sections are to be read together.

7) Earlier in the year 2010 this Commission has dealt with a similar issue in Complaint No.171/SIC/2010. Complainant therein had filed a complaint against the order of PIO rejecting his request by invoking exemption u/s 8(1)(e) of the RTI Act. The SIC then, by his order, dated 24.06.2010 had held that in the said situation the proper course of action for the complainant therein would have been to file first appeal and adjudicate the propriety of refusal before first appellate authority.

8) Contrary to this ratio, this commission, in another complaint filed by one Mr. Rui Fereira against Reserve Bank of India, directed the PIO to furnish the information sought, though the complainant therein had not filed the first appeal against the order of PIO.

Said order of Commission landed before the Hon'ble High Court of Bombay, Goa Bench, being *CRA No.113 of 2004,*[***Reserve Bank of India v/s Rui Ferreira and others (2012(2) Bom.C.R.784)]*** wherein the Hon'ble High court while dealing with similar situation , at para (8) thereof, has observed:

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"8. Further, the question that arises is whether the Commission would have entertained a complaint from respondent no.1 directly under Section 18 when respondent no.1 had failed to file an appeal against the order of the PIO of the Co-operative Bank rejecting the request and against the order of the Reserve Bank of India, refusing the request on the ground that the information is protected by Section 8(1)(a) of the Act. Section 18 confers power on the State Information Commission to receive and inquire into a complaint from any person in the nature of supervisory in the circumstances referred to in that Section. Thus the State Information Commission may entertain a complaint from any person who has been unable to submit a request to the PIO because no such officer has been appointed or if the PIO has refused to accept his application for information or an appeal under the Act; or whether the person has been refused access to any information requested under the Act or whose request has not been responded within the time specified under the Act etc. The case of respondent no.1 does not fit into either of the circumstances referred to under Section 18(1)(a) to (f). The PIO of the Co-operative Bank and the RBI have rejected the request for information after considering the request in accordance with law. The Act provides for appeals against such orders vide Section 19. Section 18 commences with the words:

1)Subject to---------"

9) In another case, while dealing with similar facts, the Hon'ble Apex Court, in the case of ***Chief Information Commissioner and another v/s State of Manipur and***

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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."*

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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."*

Again at para (42) of the said judgment their lordships have observed:

> *"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) We also find a similar view expressed by the Hon'ble High Court of Karnataka at Bangalore in *Writ petition nos.19441/2012 & W.P.Nos.22981-22982/2012.*

11) Contrary to the above ratio this Commission in the Complaint No 518/SCIC/2010 decided on 07/10/2010 filed

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before it u/s 18 of the RTI Act, had directed the PIO to disclose the information. Said order also was challenged before the Hon'ble High Court of Bombay at Goa in ***Writ Petition No. 739 of 2010. (Goa Cricket Association v/s state of Goa and Others).*** In said petition several contentions were raised one out of the same was that if the complainant was aggrieved by rejection of his application by PIO remedy available to the Complainant was to file an appeal before first appellate authority. The Hon'ble High Court after considering the Judgments in the case of Reserve Bank of India v/s Rui Ferreira and others (supra) as also in CIC v/s State of Manipur (Supra) reversed the said order of CIC with observation :

> " *7. The fact situation in the present case is almost identical and though we may not castigate the decisions in the same harsh words, the same principle would apply. Section 18 of the Act confers jurisdiction on the State Information Commission to entertain the complaint in cases which do not include the case of refusal by the public authority to disclose the information. The remedy available to the complainant, in such a case, therefore, is by way of First Appeal before the First Appellate Authority".*

12) On careful analysis of the above decisions of the Hon'ble High Court and the Hon'ble Supreme court, nothing remains to be discussed further. The issue regarding maintainability of the complaints u/s 18, seeking information, without filing appeals u/s 19(1) of The RTI Act, as involved herein is laid at rest and the position of law is laid down as above. The facts involved in

the case in hand and those before the Hon'ble High Court and the Hon'ble Supreme court are identical.

13) Nowhere is it 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. As held above, 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 before any action of penalty is initiated against him. Seeking penalty and information by way of complaint without first appeal, would be violative of such rights.

14) Earlier this commission has found that there are several files pertaining to complaints pending since 2008. It was further observed that during the individual hearings of such complaints, most of the complainants have remained absent continuously. Also PIOs have challenged the maintainability of such complaints before the commission as no first appeals were filed.

As a larger intricate legal issue of maintainability of such complaints without first appeal, was involved in several matters, this commission felt it necessary to constitute full

bench of the commission to hear such issue. Accordingly CIC constituted full bench of the commission comprising of CIC and both SICs. All the complaints were heard in a common hearing on 20/4/2016. After considering all the above cases as decided by Hon'ble High Court and Supreme Court, the full bench of this Commission by order, dated 27/5/2016 held that the complaints u/s 18 of the RTI Act cannot be entertained unless the complainant exhausts his remedy of first appeal u/s 19(1) of the act seeking enforcement of his fundamental claim of seeking information.

15) In the circumstances we hold that the present complaints filed against rejection of the application for information are not maintainable. Considering the fact that these complaints is being proceeded before this commission since long time under the bonafide belief that such complaints are maintainable, we find that the interest of the complainant is required to be protected. We therefore proceed to dispose these complaints with the **order** as under:

16) All the above Complaints stands closed. Complainants are granted liberty to file first appeal under section 19(1) of the Act in respect of the rejection/refusal of his/her request for information vide their applications filed under section 6(1) of the Act seeking information, within thirty days from the date of receipt of this order. If such an appeal is filed, the first appellate authority shall decide the same on merits in accordance with law, without insisting on the period of Limitation.

The rights of the complainants herein to file complaints in case the complainants are aggrieved by the order of the first appellate authority in such appeals, are kept open.

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Parties to be notified. Copy of this order shall be furnished to the parties free of cost. Proceedings stands closed.

Order to be communicated.

Sd/-
(Prashant S. P. Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji –Goa