

GOA STATE INFORMATION COMMISSION
Seventh Floor, Kamat Towers, Patto, Panaji –Goa.
CORAM: Shri Prashant S. P. Tendolkar
Chief Information Commissioner
Smt. Pratima K. Vernekar
State Information Commissioner

Complaint No.82/SIC/2010

Mrs. Sanyogita Shetye through her power of Attorney
Shri Kashinath Shetye,
R/o Bambino Bldg.,
Alto Fondvem, Raibandar,
Tiswadi-Goa. ... Complainant

V/s

1) The Public Information Officer,
Dept. of Accounts,
Panaji-Goa.
2) The First Appellate Authority,
Dept. of Accounts,
Panaji-Goa. ... Opponents

Filed on: 17/02/2010
Disposed on : 25/07/2016.

FACTS:

- a) The Complainant by her application dated 30/06/2009, sought from Respondent No.1 certain information with reference to the circular of Chief Secretary No. 3/5/2009-ARD dated 09/06/2009. The application was filed under section 6 of the Right to Information Act (RTI Act) seeking information on seven queries. At query No.7 the Complainant had asked for inspection for all concerned files, diary and registers.
- b) The said application was replied by Respondent No. 1 by his letter dated 23/07/2009 asking the complainant to attend the office on 29/07/2009 between 10.00 am to 01.00pm for inspection of concerned files.
- c) It appears that the Complainant was aggrieved by the said reply dated 23/07/2009 and hence, preferred the first appeal to the Respondent No.2 on 31/07/2009.
- d) The said first appeal was dismissed by the Respondent No.2 by his order, dated 17/08/2009.

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e) The complainant has not reacted against the said order of the First Appellate Authority (FAA) within the time stipulated under the Act by second appeal, but has filed the present complaint on 17/02/2010 u/s 18 of the Act. In the present complaint the complainant has prayed for the information as sought as also for penalty and compensation.

f) Notice of the complaint was given to the parties pursuant to which the PIO filed his reply. It is the contention of the PIO that the present complaint is not maintainable as no appeal has been preferred against the order of FAA. It is also the contention of the PIO that in the present complaint the complainant has clubbed reply, dated 23/07/2009 and order, dated 17/08/2009 of the FAA which is illegal. According to the PIO no complaint can be filed in respect of reply, dated 23/07/2009.

g) The Complainant has not filed any counter reply and hence matter was taken up for arguments.

h) During the arguments and clarification sought, it was the contention of the PIO that as the order, dated 17/08/2009 passed by the FAA is not challenged by the complainant within the stipulated time, Complaint has submitted to the said order and hence she cannot reopen the same after the period of limitation and the present complaint is not maintainable. The Advocate for the PIO also submitted that on receipt of the application on 23/07/2009 the PIO has informed the complainant to attend the office for inspection inspite of which she did not attend. According to the advocate for the PIO as the information could be furnished due to the laps and inaction on the part of the complainant herself she cannot have any grievance against the PIO.

i) In spite of giving opportunity the complainant could not clarify the matter beyond the complaint as filed here and the matter was posted for orders.

FINDINGS:

a) On going through the records and the complaint Memo the complainant is aggrieved by the order, dated 23/07/2009 and 17/08/2009. The first order, dated 23/07/2009 is infact letter from PIO requesting the complainant to attend for inspection as per query No.7. Said letter, even if is construed as a reply, the same was challenged by the complainant before the FAA.

b) If one considers the provisions of the Act, the order passed by the PIO is appealable and can be challenged before the FAA. Assuming for a while that the letter, dated 23/07/2009 is considered as the order of PIO, the same was challenged before the FAA. The FAA has considered the grievance of the complainant and has decided the same by his order dated 17/08/2009. In the circumstances the communication of PIO, dated 23/07/2009, though could not be classified as an order, the same cannot be challenged directly before this Commission. Section 19(3) of the Act confers powers and jurisdiction to this Commission to entertain appeals against orders passed by FAA. Hence, the relief of the Complainant in respect of his grievance against order, dated 23/07/2009 cannot be entertained. The complainant has exhausted this remedy of first appeal under section 19 (1) by appeal No.08/2009, before the FAA. Hence, the appropriate authority having dealt with the said order, this commission cannot consider the prayer afresh unless the same is appealed against within the period prescribed.

c) The second order against which the present complaint is filed is dated 17/08/2009. By said order, the FAA has ultimately dismissed the prayer of the complainant to set aside the said communication dated 23/07/2009. Thus it is an order passed by FAA under section 19(1) of the Act.

d) Section 19(3) of the act confers power on the seeker to challenge the order of FAA passed under section 19(1) of the Act. Under the said provision such appeals are to be filed within 90 days from the date of receipt of the said order. Proviso to said section confers powers to the commission to extend the time for filing appeal on sufficient cause.

e) The complainant if was aggrieved by the order, dated 17/09/2009, ought to have challenged the order by way of second appeal under section 19(3). The complainant has not done so consequently has submitted to the said order, dated 17/09/2009. Having not challenged the same by way of second appeal, the said order, dated 17/09/2009 sustains and is in operation.

f) In the present complaint, the complainant has asked for furnishing of the information free of cost. Such a relief could have been prayed by the complainant in the second appeal and not in complaint. By this complaint the complainant has also prayed penalty and compensation in terms of section 18(1)

(a) to (f).

g) Section 18 of the Act reads:

"18. Powers and functions of Information Commission:- (1)

Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person:-

- (a) Who has been unable to submit a request to a Central public information Officer, or State Public Information Officer as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Commission or the State Information Commission, as the case may be;*
- (b) Who has been refused access to any information requested under this act;*
- (c) Who has not been given a response to a request for information or access to information within the time limits specified under this Act;*
- (d) Who has been required to pay an amount of fee which he or she considers unreasonable;*
- (e) Who believes that he or she has been given incomplete, misleading or false information under this Act; and*
- (f) In respect of any other matter relating to requesting or obtaining access to records under this Act.*

Thus the act empowers the Commission to inquire into complaints which involves only the cases as contained at clauses (a) to (f) above. It is nowhere the case of the appellant that he was unable to submit a request OR that PIO has refused to accept OR that has refused access OR that he has not been given a response to a request for information OR that he was required to pay an amount of fee which he considers unreasonable; OR that he was given incomplete, misleading or false information OR that it is a matter relating to requesting or obtaining access to records.

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Thus according to us the appellant has not made out any ingredients of section 18(1) (a) to (f) of the act. Hence to our mind the present appeal is beyond the scope of this Commission.

h) Section 19 (5) of the act cast the onus to prove that the denial of request was bonafide, on the PIO. It is the contention of the complainant that the information was denied. The PIO in the first Appeal had the opportunity to prove his bonafides by discharging this burden. Accordingly he has proved so to the satisfaction of the FAA and it is for this reason the first appeal was dismissed. The same has attained the finality. In the circumstances even if one holds the communication dated 23/07/2009 as denial of information, the PIO has proved that such denial is not malafide in the appeal before the first appellate authority. Thus the ingredient of section 18 (1) (a) to which are required to impose penalty and order compensation are not proved.

In the circumstances the prayer for penalty and compensation as sought by the complainant are also not maintainable. Considering the above facts we find that complainant has failed to make out any case for penalty or compensation. We therefore proceed to dispose present complaint, with the order as under.

ORDER

Complaint stands dismissed.

Parties to be intimated.

Proceeding closed.

Pronounced in the open proceedings.

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

Sd/-
(Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission
Panaji-Goa

