

**GOA STATE INFORMATION COMMISSION**

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

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**Appeal No. 87/SCIC/2014**

Mr. Deepak Vaigankar,  
The Public Information Officer,  
Block Development Officer(Bardez),  
Mapusa Bardez Goa.

.....**Appellant**

**V/s.**

1. First Appellate Authority,  
Dy. Director of Panchayat (North),  
Tiswadi , Panaji-Goa.
2. Mr. Nishikant Narvekar,  
R/o H.No. 309, Mardung Waddo,  
Assagao ,Bardez Goa.

.. ..**Respondents**

**CORAM:**

**Smt. Pratima K. Vernekar**, State Information Commissioner

**Appeal filed on:14/08/2014**  
**Decided on:08/03/2017**

**ORDER**

1. I disposes of this appeal filed u/s 19(3) of the RTI Act, 2005 against the order dated 04/08/2014 passed by the learned Director of Panchayat , North at Panajim, who is Respondent No. 1 herein, allowing the first appeal bearing No. DP/APPEAL/RTI/08/2014 filed before him by the Respondent No. 2 Shri Mr. Nishant Narvekar.
2. The brief facts leading to present appeal are that the information seeker Shri Nishikant Narvekar, respondent No. 2 herein had filed application u/s 6(1) on 8/5/14 seeking information on three points as stated therein in the said application.
3. The said application was responded by the present applicant on 4/6/2014. Being not satisfied with the reply of the present applicant, the Respondent No. 2 filed first appeal before Dy. Director of

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Panachayat North on 21/7/14 being first appellate authority and the Respondent No. 1 herein i.e. the first appellate authority vide order dated 4/8/14 was pleased to allow the appeal and vide said order directed PIO to furnish the information to the Respondent No. 2 with regards to point No. 2 of his application within 10 days from the date of the order.

4. Being aggrieved by the order of Respondent No. 1 first appellate authority, the present appeal came to be filed by the PIO of the public authority
5. After constitution of this Commission, fresh notices were issued to parties by Registered A.D. In pursuant to the notice appellant was present in person alongwith Advocate S. Parab. Respondent No. 1 opted to remain absent Respondent No. 2 was represented by Advocate Pratima Madiwal. Reply came to be filed by the Respondent No. 2 on 21/1/16 .

Submission of the appellant

6. Written arguments were filed on behalf of appellant on 14/9/16. It is his contention that as a PIO he has right to challenge the order passed by the First appellate authority U/s 19(1) of the RTI Act and in support of said contention relied upon the rulings of the central information commission passed in appeal on 5/3/2008 No. CIC/AT/A/2008 /00291, V.R. Eliza CPIO V/s Yogita Chawan, wherein Central information commission have entertained the second appeal filed by the CPIO. He further highlighted para 10 and submitted "Section 19(2)" makes an explicit mention of appeal by concerned third party. Which also includes public authority, as such it is his contention that he is also entitled for relief u/s 19(3) as he is aggrieved by the decision of the First appellate authority. However appellant the PIO was not able to justify in what manner he was aggrieved by the order dated 4/8/14 passed by the Respondent first

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appellate authority and/or that how the order of Respondent No. 1 First appellate authority is illegal and perverse. One of the ground taken in appeal was that the first appellate authority cannot direct the PIO to create the information. However he has failed substantiated the same and was unable to explain in what way or in what manner the Respondent No. 1 had directed to create the information.

Submission of the Respondent No. 2

7. It is the Submission of the Respondent No. 2 Shri Nishikant Narvekar that in pursuant to the order dated 4/8/14 passed by Respondent no. 1 FAA in appeal bearing No. DP/APPEAL/RIA/08/2014, the Respondent No. 2 has filed the complaint before Goa State information Commissioner, Panaji, Goa which have been registered as complaint No. 41/SCIC/2014 and a Hon'ble State information commission was placed to passed an interim order on 9/1/15 directing the PIO that is the appellant herein to furnish the information with in a month which was not furnished by the PIO till date, which is also the subject matter of the present appeal.

In other words it is the case of Respondent No. 2 Shri Nishikant Narvekar that since the direction are already issued by the state information commission vide their order dated 09/01/2015 , which have not be challenged by the appellant, same attends finality and as such the present appeal become infructuous

### **Findings**

8. I have the perused the entire records of this proceedings considered the written arguments filed by the appellant and the citations relied by him and also considered the reply of the Respondent No. 2
9. The present appeal before this Commission is filed by PIO against the decision of FAA. In my considered opinion the appeal process created u/s. 19 of the RTI Act is purely for the use of an aggrieved RTI

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applicant or any person who may be treated as a third party to an RTI application but not for the purpose of the PIO or FAA. The relevant provisions are reproduced below:

“19. (1) Any person who, does not receive a decision within the time specified in sub section (1) or clause (a) of sub-section (3) of section 7, **or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer**, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such Officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority: ...

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, u/s. 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under section 19 (3) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Thus scope of section 19 implies that only two categories of persons may challenge the decision of a PIO

- a) an aggrieved RTI applicant and
- b) a third party who is aggrieved by a PIO's decision to disclose information pertaining to he/she/it which is treated as being confidential by that third party.

Further, section 19(1) only permits an aggrieved RTI applicant to submit a first appeal to an FAA on two grounds only, *i.e.*, if no

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decision has been received from the PIO or if he is aggrieved by a decision of the PIO, namely, rejection of the request or partial disclosure. A third party to an RTI application may also submit a first appeal to the FAA u/s. 19(2). Therefore the first appeal process does not contemplate any other right of appeal vesting in any other person including any other officer of the public authority.

It should be noted that section 19(3) refers to a second appeal and not a fresh appeal against a decision made u/s. 19(1) which means an appeal that may be submitted is only against the FAA's order by the aggrieved RTI Applicant or an aggrieved third party. It is not open for any other person including any officer of the public authority such as the concerned PIO to approach the concerned Information Commission challenging the order of the FAA. PIO is the information provider, and not the seeker of the information. Section 19 (3) of Right to Information Act, deals with the appeal procedure and the above provisions are made in the interest and for the benefit of information seeker. There is also no provision in the Right to Information Act to consider an Appeal filed by PIO's against the order of FAA as the very purpose of this Act is to provide the information.

Under Section 19(1) the aggrieved person who has been given the right of appealing is clearly the citizen who does not receive the decision from the PIO or if the decision goes against him. Clearly it does not include the PIO himself in its ambit. Further PIO is also not covered u/s 19(2) as a third party. This is so, before the third party as defined u/s 2(n) and section 11 should be a person or a public authority whose information which was of confidential nature has been directed to be furnished certainly, the PIO whose order is set-aside by the first appellate authority cannot be a third party.

10. In the matter of Chief Information Commissioner And Another vs. State of Manipur and Another [(2011)15 SCC 1], the Hon'ble Supreme Court of India explained the scheme of appeals provided

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for in the RTI Act in the following words:

*“35. ... 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. 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. ...*

At para 43 it has been held.

“There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information.” [emphasis supplied]

Nowhere in its detailed explanation of the scheme of section 19 does the Hon’ble Supreme Court recognize the right of a PIO to any of its officers to challenge a decision of FAA made under the RTI Act.

11. The Central information commission in appeal No.06/IC(A)/CIC/2006, K.K. Shrivastav, CPIO, Commissioner, Central excise Mumbai V/s Chief commissioner central excise Mumbai vide their order dated 3/3/2006 has held

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*"The appeal before the commission is before CPIO against the decision of the own appellate authority. CPIO is the information provider and not a seeker of the information there is no question of denial of information as such , there is no provision in a RTI Act to consider such appeal/complaints. Hence the appeal is not maintainable the appeal is dismissed."*

12. A similar issue was decided by this commission in appeal No. 07/2006, PIO Under Secretary (Revenue)V/s. V.B. Prabhu Verlekar where in it was held by this commission

"the PIO cannot be said to be aggrieved person and cannot file second appeal against the decision of the First appellate authority before the commission u/s 19(3) of the RTI Act."

13. The decision relied by the appellant is not applicable to the facts of the present case as the present appeal is not filed by the third party who is aggrieved by the PIOs decision to disclose the information pertaining to he/she/it which is treated as been confidential by the third party. The said appeal is also not filed by the public authority, Who has got right to prefer an appeal against the decision of CPIO as u/s 2(n) of the RTI Act, "Third party" includes "A Public Authority". In the present case the appeal is preferred by the PIO and not by the public authority.

14. Vide the RTI application dated 08/05/2014 the Respondent No. 2 herein information at point NO. 2 had sought for certified copies tour diary of Mr. Deepak Vaigankar (BDO) of the month March , April, May 2014. Coincidentally the said Deepak Vaigankar he is also PIO in this case.

Apparently the information sought by the Respondent no. 2 Nishikant Narvekar are public documents which does not appears to be in confidential in nature, as such the Respondent No. 1 the FAA who is a senior in rank to the PIO vide their order dated 04/08/14

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rightly directed the appellant PIO provide the specific information to the appellant as regards to point no. 2 within 10 days from the date of the order.

Information sought is also not coming within the purview of exemption provided u/s 24 of Right to Information Act. In present case the information sought is from public domain which also not exempted u/s 8 of Right to information Act.

15. The present second appeal filed by Shri Deepak Vaingankar in the capacity of PIO and not as a third party.

As such I am of the opinion that the order passed by the First appellate authority does not give any scope to PIO to challenge the order passed by his own senior before the second appellate authority. In other words I hold that the second appeal is not maintainable as he has no locus standie to challenge the said order of his Senior officer that is the first appellate authority as an PIO.

16. In view of above the Appeal is not maintainable, therefore stands dismissed.

Proceeding are accordingly closed.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided under the Right to Information Act 2005.

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