

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

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

**Appeal No.76/SCIC/2017**

Shri Digambar P. Talkar,  
H. No.321, Chinch Bhatwadi,  
Mayem, Bicholim –Goa. .... Appellant

V/s

The State Information Officer,  
Dy. Town Planner Bicholim,  
Taluka Office Bicholim –Goa. .... Respondent

Filed on :13/6/2017

Disposed on:14/11/2017

**1) FACTS:**

a) The appellant herein by his application, dated 28/10/2016, filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO in respect of a letter issued by collectorate North Goa Flying Squad, conducted inspection in survey no.181/7 at village Mayem, Bicholim.

b) The appellant herein has not clarified whether the said application was replied or not but as per the averments in first appeal the said application u/s 6(1) was not responded and as such deeming the same as refusal appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

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c) According to appellant, in the course of hearing of First Appeal on 7/2/2017 the appellant and his advocate visited the office of the PIO and on inspection the documents required by the appellant were identified and in the course of hearing on 9/3/2017 the copies of the documents were furnished. The appellant's advocate in the course of hearing also admitted having received the documents which were sought and that thus the said information is fully received.

d) According to appellant the order passed by the FAA is unsustainable, arbitrary and contrary to the act. It is also the contention of appellant that FAA failed to comply with the mandate of section 7 sub section 8 of the act and also that it also failed to take note of the detriment suffered and mental torture caused to appellant as also to take any disciplinary proceedings against PIO. It is with the said grounds as also with other grounds that the appellant has approached this commission with this second appeal u/s 19(3) of the act.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 5/10/2017 filed a reply to the appeal .Vide the said reply the facts are not disputed. However according to PIO the application for information was replied within thirty days. According to him the information sought was not information as defined under the act and that for answering hypothetical questions analysis of the records were required. Arguments were heard.

**2. FINDINGS:**

a) Perused the records and the grounds of the present appeal. I have also considered the reliefs sought by the appellant. In the present appeal the appellant has not sought any directions for information as according to him the information as was sought, has been furnished to him. The reliefs sought are seeking action u/s 7(8) 1, 2 and 8 (appears to be 3) of the act. It is therefore necessary to consider the said provisions. Section (7) which reads:

“7. Disposal of request.\_\_(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in section 8 and 9:

(2)----

(3)----

(4)----

(5)----

(6)----

(7)----

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,

(i) the reasons for such rejection;

- (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the particulars of the appellate authority.”

**b)** As per appeal memo there is no mention of whether the said application, dated 28/10/2016 was at all responded by PIO. The only statement which is found is that as the information was not furnished within thirty days he preferred First appeal. However as per the reply of PIO filed to this appeal it is seen that the said application was responded on 28/11/2016. On perusal of the said reply dated 28/11/2016, which is filed by the PIO on record, it is seen that the request is rejected on the ground that the same is hypothetical and hence not available. The said reply specifies the time within which the appeal lies as also the details of the FAA.

**c)** Section 7(1) above does not mandate only furnishing of the information in all cases but the mandate thereof is pertaining to period of 30 days within which the request is required to be responded. The said section 7(1) grants powers to PIO either to furnish the information sought or to reject the information.

**d)** The provisions of section 7(8) makes certain requirements mandatory when the request is rejected. It requires the reasons to be disclosed and inform the period prescribed for preferring first appeal and the particulars of the First Appellate Authority.

**e)** On considering the reply, dated 28/11/2016 I find that the PIO has given the reason for rejection as also has furnished the details of FAA and the period prescribed for first appeal. Thus the said provisions of section 7(8)(i),(ii) and (iii) are complied by PIO. The act does not mandate that in each and every case the information has to be compulsorily disseminated. The same can be also rejected with reason. The rights are conferred to PIO. However the same is be exercised only in cases supported by reasons.

Considering the above response of the PIO, I find no illegality on the part of PIO in dealing with the application. The PIO may be wrong in his reasons to reject the request but that itself does not implies any malafide on his part.

**f)** The appellant is also aggrieved by the order of the FAA which is challenged in this appeal. It is according to appellant that the FAA has failed to take note of the fact that the PIO has intentionally and malafidely not furnished the information and also failed to consider the detriment and torture suffered by the appellant. It is also the ground of appellant that the FAA failed to take disciplinary proceedings against the PIO.

**g)** The powers of the FAA in first appeals are specified in section 19(1) of the act. Unlike powers granted to commission under section 19(8) and section 20 of the act, the powers granted to FAA

under section 19(1) are only to decide the appeal. The said powers are not extended beyond the hearing of the appeal to impose any penalty or compensation as is sought by the appellant herein. Such powers are granted only to commission in second appeal u/s 19(8) and 20 of the act.

**h)** It is also required to be noted that u/s 19(5) the PIO is granted a forum to prove his bonafides while dealing with the application u/s 6(1) of the act. This he can do in any appeals, whether the first appeal under section 19(1) or second appeal u/s 19(3). In the present case the PIO could not prove before FAA his bonafides in refusing the information and hence he was directed to furnish the same, which accordingly he furnished to the appellant.

In this second appeal also by his gesture of furnishing the information during first appeal based on the directions of the FAA itself shows his bonafides. In fact as the grievance of the appellant was redressed at the FAA level itself the appellant cannot be deemed as aggrieved party for filing second appeal.

**i)** The High Court of Kolkata while considering a similar issue in the case of *Metropolitan Cooperative Housing Society Ltd. and another V/S The state Information Commission and others (W.P.12292(W) of 2009)* has observed in the following words:

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*"15. Mr Kundu is justified in his contention that Section 19 of the RTI Act confers right on a party aggrieved by the decision of the first appellate authority or the inaction of the first appellate authority to give a decision to file a second appeal before the State Information Commission. Since the decision of the first appellate authority was adverse to the interest of the first petitioner and the petitioners considered themselves to be persons aggrieved, I hold that the petitioners did have a right to prefer a second appeal. Consequently, their appeal ought to have been considered by this State Information Commission on merits. The impugned order dated 13/01/2009 is unsustainable in law.*

*16. I need not on this petition decide whether the second respondent correctly decided the issue as to whether the first petitioner is a public authority within the meaning of the RTI Act or not, for the reason that the appeal before him was not competent. A right of appeal must be traceable in a statutory provision is settled law. Section 19 of the RTI Act does not confer any right on an information seeker to prefer either first appeal or second appeal if information as claimed by him is directed to be furnished by the original authority or the first appellate authority, as the case may be. Here the first appellate authority allowed the claim of the fifth respondent. If anyone could be regarded as person aggrieved by the decision of the first appellate*

*authority, it were the petitioners. The fifth respondent having succeeded in his claim before the first appellate authority, he could not have filed second appeal. The order dated 25/06/2009 is also not sustainable in law on this sole ground."*

**j)** Advocate for the appellant in support of his contentions has relied upon the judgment of The Punjab & Haryana High Court in the case of *A.N.Chauhan V/S Pradeep Bhardwaj & Another (2017(1) All MR(Journal) 62*.

I have considered the said judgment. The ratio therein is distinguishable to the case in hand. In the said case the PIO had failed to supply the information initially. Before the FAA did not show any reason for refusal and failed to prove his bonafides but offered to furnish the same to the seeker on payment of fees. In spite of the same no information was furnished. The seeker of the information therein filed second appeal to the commission which was allowed and directions were issued to supply the information free of cost. In spite of said order by commission the same was not complied. This resulted in the said order by Hon'ble High Court upholding the penalty for lack of bonafides and non compliance of the order of commission. The facts therein are thus distinguishable. In the said case though the PIO therein had the opportunity to show his bonafides in delaying information he did not avail it.

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**k)** Considering the above set of facts and the circumstances I find no grounds in the appeal to grant the relief as prayed. The appeal therefore lacks merits and hence I proceed to dispose the same with the following :

**ORDER**

The appeal is dismissed. Proceedings closed.

Notify the parties.

Pronounced in the open proceedings.

Sd/-

**(Mr. Prashant S. P. Tendolkar)**  
State Chief Information Commissioner  
Goa State Information Commission  
Panaji-Goa