

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa.

Complain 38/ SCIC/20 14

Shri Nishakant Narvekar,
R/o H.No. 309, Mardung Waddo,
Assagao, Bardez Goa.

..... Complainant

V/s.

1. Public Information Officer,
Village Panchayat Secretary(Assagao),
O/o Village panchayat of Assagao,
Assagao, Bardez Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Complaint filed on: 17/11/2014

Decided on: 24/04/2017

ORDER

1. Brief facts of the present Complaint are as under:-

Shri Nishakant Narvekar had filed an application dated 3/7/2014 before the PIO Officer (PIO), Village Panchayat Assagao, Goa u/s 6(1) of RTI Act requesting therein for certain information as specified in the said application.

2. It is the case of the complainant that despite of visiting the office of PIO on several occasion for collection of information, the same was not provided to him .

3. It is further the case of the complainant that vide letter dated 2/8/2014, the Respondent PIO informed him that the information which was sought by him on 1 an 2 are not available in the records.

4. Since his application was not responded within time deeming the same as refusal the complainant filed 1st appeal before BDO of

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Mapusa on 14/8/2014. And the First appellate authority by an order dated 26/9/2014 allowed the said appeal and thereby directed the Respondent PIO to furnish the concern information to the complainant within the period of 2 weeks from the date of communication of the order.

5. Since, despite of order of First appellate authority, as no information was furnished to him within stipulated time, and being aggrieved by the action of Opponent No. 1, PIO the present Complaint came to be filed before this Commission on 17/11/2014. With a prayer for direction as against Respondent PIO for furnishing the required information to him interms of judgment and order dated 26/09/14 passed by the first appellate authority. And for invoking penal provisions .
6. Notices were issued by my predecessor in the present complaint and also interim order was passed on 9/1/15 by this commission, thereby directing the PIO Shri Ramesh Gawas to furnish the information to the complainant as per order passed by the first appellate authority in first appeal on 26/9/14 within a month in respect of complaint No. 38,39 and 40/2014.
7. After appointment of this commission fresh notices were issued to the parties. In pursuant to which appellant appeared along with Advocate Prartima Madival. The present PIO Rajesh Asolkar along with Advocate Mishael M. Dissa was also present.
8. Reply came to be field by the present PIO on 17/6/2016. In the said reply it was contended by present PIO that he had taken a charge of V.P. Secretary of Village Panchayat Assagao on 3/3/2016.
9. In the said reply it was also contended that he Advocate Mishael M. Dissa had appeared in complaint 39/SCIC/2014 and that she had no knowledge of Complaint NO. 38/SCIC/2014 and 40/SCIC/2014 and had not filed wakalatnam in the said

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matters. It was also contend that he had learned about interim order only on 16/5/2016 when he received the copy of documents of complaint No. 39/SCIC/2014 . He further submitted that in the Panchayat too they had no record of having received the intimation/notices in the above mention case i.e complaint No. 38/SCIC/14 and Complaint No. 40/SCIC/14 and as such came up with his grievance that interim order dated 9/1/2015 passed by the commission without intimating them amount so violation of the principal of justice. And deserves to be recalled.

10. Affidavit is also placed on record by Advocate Mishael M. Dissa in support of the said contention.
11. The copies of all the documents were furnished to the advocate for Appellant in order to enable to file his reply. Despite of awarding ample opportunity to the complainant to file his say, as no say came to be filed on behalf of complainant it appears that they have no say to offer and that the averments made in the reply and the affidavit are not disputed by them.
12. The advocate for Respondent also filed reply on behalf present PIO Shri Govind P. Khalap on 6/4/2017 thereby enclosing the reliving order of then PIO Shri Ramesh S. Gawas, V.P. Secretary on attaining the age of superannuation . On account of absence of the complainant and of his lawyer the copy of the said application dated 6/4/2017 could not be furnished to them. The complainant was directed to collect the same and to file his appropriate reply within 8 days and the matter was fixed for 24/4/2017 for orders. Till date no any reply is filed by the complainant.
13. Perused the material on record the point for my determination is
 1. Whether the information can be provided in the complaint.

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2. Whether the penalty can be imposed after retirement of the PIOs

14. 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.

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" 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 lordship 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."

15. In the High Court of Karnataka At Bangalore dated in writ Petition No. 19441/2012 and Writ Petition Numbers 22981 to 22982/2012 C/W Writ Petition No. 24210/2012 and Writ Petition Numbers 40995 to 40998/2012 (GM-RES) Between M/s Bangalore Electricity Supply Company Limited. V/s. State Information Commissioner, Karnataka information Commission. has held that *"information Commissioner has got no powers under section 18 to provide access to the information which has been requested for by any person and which has been denied and that the remedy available would be to file an Appeal as provided under section 19 of the RTI Act"*
16. By applying the same ratio, this Commission has no powers to provide access to information which have been requested for by person or which have been denied to him,. The only order which can be passed by the commission, as the case may be, u/s 18 is an order of penalty provided u/s 20 of RTI act.

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17. However before such order is passed the commission must be satisfied that the conduct of information officer were not bonafide.

Section 20(1) of the act provides that the commission while deciding a complaint or an appeal, shall impose penalty on erring PIOs incase where the PIO has, without any reasonable cause: . refused to receive an application for information, or. has not furnished information within the time specified {u/s 7(1)}, or. Malafidely denied the request for information, or. Knowingly given incorrect , incomplete or misleading information, or. Destroyed information which was subject of the request, or. Obstruct in any manner in furnishing the information .

18. In the present case the present PIO vide his reply dated 6/4/17 has informed at the time application dated 19/6/2014 was filed Shri Ramesh Gawas was the PIO . It was also further submitted that when the order was passed by the FAA and the interim order was Passed by this commission said Ramesh Gawas was acting PIO who has been relieved from government service on attaining the age of Superannuation vide relieving the order dated 20/1/16

19. It is not disputed that then PIO Shri Ramesh Gawas has retired from services with effect from 31/1/2016. The PIO appointed by the public Authorities are its employees and a privity of contract exist between such employees and the Public Authority/Government. Such privity concludes after retirement. Section 18 read with section 20 of the Act, provides for imposition of penalties on erring PIO and not public authorities. Thus the liability for payment of penalty is personal to PIO and is recoverable from the salaries payable to such employee's during their services. Similarly recommendation of disciplinary action u/s 20(2) can also be issued only during the period of service as after retirement the same becomes redundant. After the retirement, what is payable to the employee are the pensionary benefits only.

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20. Pension Act 1871, which governs pension of retired employees, at section (11) grants immunity to the pension holder against its attachment. Said section 11 of The Pension Act 1871 reads:

" 11)Exemption of pension from attachment: No Pension granted or continued by Government or Political consideration, or on account of past service or present infirmities or as a compassionate allowance and no money due or to become due on account of any such pension or allowance shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such court"

21. Section 60 (1) (g) of civil procedure code which is reproduced here under also bars attachment of pensioner in following words:

"1) The following particulars shall not be liable to such attachments or sale namely:

(a)

(b)

(C)

(d)

(e)

(f)

(g) Stipends and gratuities allowed to pensioners of the Government or of a local authority or any other employer, or payable out of any service family pension fund notified in the gazette, by the central government or the state Government in this behalf and political pension."

23) Hon'ble Apex Court in **Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra Appeal (Civil) 1874 of 1999**, has held:

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"This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands....."

The Hon'ble Apex court in yet another case viz. ***civil appeal NO 6440-41 of 2008, Radhe shyam Gupta v/s Punjab National Bank*** has held

" even after the retiral benefits such as pension and gratuity had been received by the any person, they did not lose their character and continued to be covered by the proviso (g) to section 60 (1) of the code of civil procedure" .

From the reading of above provisions and from the ratio laid down by the Hon'ble Supreme court in various decisions , leaves no doubt that the benefits received under pension, gratuity by a retired person are immune to attachment. Under the circumstances this commission is neither empowered to order any deduction from his pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded. .

In the above back ground I find that the proceedings for imposition of penalty as sought by the appellant herein are not maintainable and hence are liable to be dismissed.

Proceedings closed.

Notify the parties.

Pronounced in the open court.

Sd/-

(Ms. Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa

