

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

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

Complaint No.21/ SCIC/2014/

Dr. Aashish Kamat,
H.No. 79, Comba alto,
Margao-Goa.

.....Complainant.

V/s.

1.Mr. Nilesh Phaldesai,
First Appellate Authority (FAA) ,
Infotech Corporation of Goa,
Above Alcon Hyundai Showroom,
Porvorim Goa.

2. Mr. Umakant Naik/PIO,
Infotech Corporation of Goa,
Above Alcon Hundai Showroom,
Porvorim Goa .

..... Opponent

Complaint filed on: 16/06/2014

Decided on: 23/01/2017

ORDER

1. This order shall dispose the present Complain. The facts in brief which gives rise to the present complaint are as under:-

The Complainant by his application dated 09/01/2014 sought several information as contained therein the said application. The Opponent No. 2 Public Information Officer replied the said application on 03/02/2014 there by informed the Complainant to collect the information consisting of 222 pages by paying a fee of rupees 444/- and also provided the information by separate letter dated 03/02/2014.

2. Being not satisfied with the information provided to him and on the ground that Opponent No. 2 has denied him complete information,

he preferred the first Appeal before Opponent No. 1, First Appellate Authority (FAA) on 12/02/2014.

3. During the hearing before the FAA the Complainant received the letter dated 05/03/2014 from Opponent No. 2 Public Information Officer (PIO) requesting to pay 4042/- for the information consisting of 2021 pages.
4. The Complainant emailed the FAA on 6/03/2014 bringing the said fact to his notice. The Opponent No. 1 FAA replied to him on 10/03/2014 and also on 19/03/2014 requesting him to collect the information on payment.
5. Being aggrieved by the action of both the Opponents the present Complaint came to be filed before this Commission on 21/04/2014 with the prayer to compel the Opponent no. 1 PIO to provide him the information free of cost and for other penal relief for refusing/denial/delay of information with ulterior motive.
6. After notifying the parties the matter was taken up for hearing. The Complainant was present only during one hearing. Opponent No. 1 was represented by Nilesh Phaldesai and Opponent No. 2 was represented by Shri Umakant Naik.
7. Reply came to be filed on behalf of Opponent No. 1, FAA on 29/11/2016 no reply came to be filed on behalf of Opponent No. 2 PIO despite of giving opportunity. However during the hearing PIO submitted that he has brought the entire information to be provided to the Complainant. However, since the complainant was absent the same could not be furnished to him.
8. Since the Complainant was continuously absent this Commission has no other option then to hear the arguments of the Opponents by giving opportunity to the Complainant to file his written synopsis.
9. During the hearing the Shri Nilesh Phaldessai for the FAA submitted that he was pleased to give hearing to both the parties on 24/02/2014 and directed the PIO to furnish the additional information to the Complainant. He further submitted that vide his Email dated 19/03/2014 and informed the complainant to collect the information sought on payment of fees. It is his further case that he has made available all the necessary information to the Complainant. During hearing he also place on record a letter dated 3/03/2014 directing

the Opponent No. 2 PIO to furnish the information mentioned at point no. 1, 2 and 3.

10. It is contention of the Respondent No. 2 PIO that the application of the Complainant dated 9/01/2014 was duly replied and information also furnished to the Complainant on 3/02/2014 as such it is his contention that he has responded that well within the time framed. It is in contention that he has made letter to the Complainant dated 5/03/2014 to pay amount of Rs. 4042/- for the information consisting of 2021 pages as the Opponent No. 1 FAA has directed him to furnish the information on payment of required fees. He also submitted that the Opponent No. 1 FAA has clarified the said facts to the Complainant on 19/03/2014 and also on 10/03/2014.
11. It is contention of the PIO that he has shown bonafide to furnish him the information and also volunteered to furnish the information free of cost which the Complainant failed to collect. While concluding his arguments he submitted that the information was parted with but the Complainant refuse to pay the fees. Both Opponents thus submitted that the complaint may be dismissed.
12. In the present complaint the complainant has sought prayer 1 for furnishing the information free of cost the point which arises for my determination is that "whether the complainant is entitle for information in complaint or not."
13. 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 honored 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.

“ 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.”

- 14.** 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"

15. In view of the above rulings the information Commissioner has got no powers under section to provide access to the information and as such prayer one cannot be granted .
16. For the purpose considering the claim of Penalty and compensation it would be appropriate to consider the provisions of the act governing the same. 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 or State Assistant Public Information Officer, as the case may be, has refuse to accept his or her application for information or appeal under this Act of 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 case as contained at clauses (a) to (f) above. It is nowhere the case of the Complainant 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.

Thus considering the allegation of the Complainant the point to be determined is:-

- a) whether the Complainant was refused or denied the complete information and if yes whether it was malafide.
- b) The second point for my determination would be that whether he was told to pay the amount of fees which was unreasonable.

17. In the present Complaint the complainant challenges the action of PIO as well as FAA and claims that the information provided to him initially was incomplete and that both the Opponent has deliberately denied him complete information and or that delay of information is being done with ulterior motive on their part and the amount of Rupees 4042/- was not in accordance with the RTI provisions.

18. The prayer of the Complainant are in the nature of penal action either by granting of penalty or by compensation. The strength of evidence required in such proceedings is laid down by the Hon'ble Court of Bombay at Goa in **writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others wherein it is held;**

" 11. The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."

19. On the perusal of the records vide letter dated 03/02/2014 it is seen that all the queries were answered by the Opponent No. 2 PIO. The Opponent No. 2 PIO vide their letter dated 05/03/2014 have also intimated the Complainant that the information is ready, further during the hearing of the present Complaint the Opponent No. 1 PIO have shown his willingness to provide the information free of cost to

the Complainant and infact had carried the entire Xerox copy of the voluminous information during the hearing. Which could not be handed over to Complainant on account of his continuous absence.

20. As the Complainant contended that incomplete information was given deliberately and intentionally and that he was told to pay unreasonable fees, the onus was on him to prove the same. By continuously absent and failure to produce any evidence in support of his contention, the complainant have thereby miserably failed to discharge his burden. It appears that he is not interested in contesting the present proceedings seriously and as such not made himself available before this Commission to substantiate his case.

21. On the contrary the Opponent No. 2 PIO have shown his bonafied in furnishing the information within specific time limits.

22. Considering the above facts I do not find any malafide on the part of Opponent No. 2 PIO non furnishing the information is sufficient to attract the penalty or compensation as provided under the RTI Act hence I am unable to concede to the request of the Complainant vide his prayer B.

23. In the circumstances the Complaint stands dismissed.

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 against this order under the Right to Information Act 2005.

Pronounced in the open court.

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

