

## GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa.

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### Complain 20/ SCIC/2015

Shri Rauji Gaonkar.  
R/o H.No. 246, Okam,  
Dharbandora Goa

..... Complainant

**V/s.**

1. Public Information Officer,  
Public Health Department (Health-II),  
Secretariat Porvorim Goa .
2. The First Appellate Authority,  
Under Secretary Health,  
Public Health Department (Health-II),  
Secretariat Porvorim Goa.

..... Respondents

### **CORAM:**

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

Complaint filed on: 22/06/2015

Decided on: 28/07/2017

### **ORDER**

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

Shri Rauji Vasant Gaonkar had filed an application dated 7/11/2014 before the Public Information Officer (PIO), Public health Department, Secretariat, Porvorim Goa u/s 6(1) of RTI Act, 2005 requesting therein for certain information as specified there in the said application.

2. It is the case of the complainant that vide letter dated 9/12/2014, the Respondent PIO informed him that the information which was sought by him at point No. 1 is kept ready and same may be collected after making payment of Rs. 2 /- and with regards to information at point No. 2 it was informed that he same is not available in the department .
3. Vide letter dated 22/12/14, the Respondent PIO furnished the information at point No. 1 i.e the certified copy of the roster

maintained by the Public Health department for the post of health the educators.

4. Being not satisfied with the information furnished to him, the appellant then preferred two first appeals before the First appellate authority one on 16/1/15 and another on 25/3/15 respectively.
5. Since the said first appeals was not disposed and as the Appellant did not received any information, he approached this Commission on 22/6/15 by way of complaint filed u/s 18 of RTI Act thereby seeking for direction as against Respondent PIO for furnishing him the required information in terms of his application dated 7/11/14 and for invoking penal provisions .
6. After appointment of this commission fresh notices were issued to the parties. In pursuant to which complainant was present on one occasion and then thereafter he opted to remain absent Opponent No. 1 PIO Shri J. Khan was present alongwith Advocate Kishore Bhagat.
7. Reply came to be filed by the present PIO on 14/6/2017 . No copy of the said reply could be furnished to the complainant on account of his continuous absence .
8. On perusal of the material available on record, the point for my determination is
  1. Whether the information can be provided in the complaint.
  2. Whether there is sufficient evidence as against opponent PIO for invoking sections 20(1) of RTI Act .
9. 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.

*“ 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."*

- 10.** 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"*

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

- 12.** For the purpose of considering such liability the Hon'ble High court of Bombay, Goa bench at Panaji in writ petition No.205/2007; Shri A. A. Parulekar v/s Goa State information commission has observed

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

"unless and until it is borne on record that any office against whom order of penalty for failure to be sought to be levied and has occasion to complied with a order , and has no explanation or

excuse available worth satisfying the forum, possessing the knowledge of the order to supply information, and order of penalty cannot be levied”.

13. The Apex court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya has held at para 35

“At this juncture, it is necessary to clear some misconception about the RTI Act . The RTI Act provides access to all information that is available and existing . this is clear from the combined reading of section 3 and the definition of “information “ and “right to information “under clause (f) and (j) of section 2 of the Act . If the public authority has any information in the form of data or analysed data or abstracts or statistics , an applicant may access such information ,subject to the exemptions in section 8 of the Act .”

14. Section 2 (f) of the Act only refers to such material available in the records of the public authority. While requiring PIO to furnish the information ,he cannot be called upon to create information for being furnished.

15. The respondent PIO from the inception have informed the appellant that the information at point No. 2 is not available with them. Vide their reply dated 14/6/17, they have also submitted that the said information is 21 years old which is not available in their records. The respondents also relied upon the letter made by them on 17/1/17 to the Under Secretary Personnel and the Goa Service Commission requesting them to furnish the copy of the extracts of the department noting containing Government approval for creation of post of health educator. This leads to me to draw a conclusion that the Respondent PIO had taken efforts in trying to secure the same in order to furnish the same to the complainant.
16. The Complainant though stated in his complaint that the certified copies of the documents were not provided to him, he had not produced any supporting documents/or copies of the same to

substantiate his said case. In absence of any documents the commission cannot draw any conclusion to that effect

17. The complainant also failed to discharge his burden to show that incomplete information was furnished to him

in case of Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's has held that ;

"The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, threat the personal penalty on the PIO can be imposed. This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity.** Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute."

18. In view of above I do not find and cogent and convincing evidence brought on record by complaint to hold that the information at point No. 2 was not provided him intentionally or deliberately.
19. 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.

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.

Pronounced in the open court.

Sd/-

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