

**BEFORE THE GOA STATE INFORMATION COMMISSION**

Seventh Floor, Kamat Towers, Patto, Panaji, Goa.

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**Complainant No. 20/SIC/2014**

Shri Wilfred M. De Souza,  
2111, Baga Road,  
Calangute, Bardez Goa.  
Goa.

.....**Complainant**

**V/s.**

1. The Public Information Officer,  
Captain of Ports, Government of Goa,  
Panaji Goa.
2. The First Appellate Authority,  
Captain of Ports Government of Goa,  
Panaji Goa.

.....**Opponent**

**CORAM:**

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

**Filed on: 16/06/2014**

**Decided on: 20/03/2017**

**ORDER**

1. The Complainant Shi Wilfred M. D'Souza vide his application dated 9/12/13 filed u/s 6(1) of RTI Act 2005 sought certain information from Opponent No. 1 , PIO of Captain of Ports Panaji.
2. The said application was replied by the PIo on 11/3/2014. However according to the complainant the reply which was given by the PIO was vague and evasive as such he preferred first appeal to Respondent No. 2 First appellate authority.
3. The Respondent No. 2 first appellate authority by an order dated 8/5/2014 directed the Respondent No. 1 PIO to furnish the required information to the appellant by 25/05/2014 .

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4. In pursuant to the order of first appellate authority the information was furnished on 16/5/2014. Being not satisfied with the information furnished to him he has landed before this commission by way of complaint u/s 18 of the Act with a prayer requesting for correct information free of cost and for invoking penal provision against both the Respondents a for knowingly denying the correct information to the complainant with malafide intention.
5. Notices were issued to the parties. In despite of due service of notice the complainant opted to remain absent. Both the Respondent were represented for Advocate Kishore Bhagat. Both Respondents filed their respective replies on 30/11/16 .
7. 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*

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*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."*

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8. 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*".
9. By applying the same ratio, this Commission cannot entertain complaint with regards to application dated 09/12/13. And cannot concede to the request of the appellant for furnishing information. By only order which can be passed by this Commission as the case may be under section 18 is on order of Penalty provided u/s 20(1) and 20(2) of RTI Act 2005. However before such an order is passed the commission must be satisfied that the conduct of PIO was not bonafide.

Section 20 (1) provide that the commission by deciding a complaint or appeal, shall impose penalty on erring PIO in cases where the PIO has , without a reasonable cause , refuse to receive an application for information or he has not furnished information within time specified u/s 7(1) or malafidely denied the request for information or knowingly given incorrect or incomplete or misleading information.

10. Therefore, it is pertinent to note that as per the provisions of RTI Act only the PIO can be penalize u/s 20(1) and not the first appellate authority .

"May as it may be"

it is seen from the record the first appeal is filed on 08/04/2014 by

t he complaint and the said appeal was disposed on 08/05/2014, within stipulated time of one month by the Respondent no. 2 First Appellate Authority. The Respondent No. 2 First Appellate Authority was diligent in his duties under the Right to information Act.

11. Ample opportunities were given to the complainant to collect the reply filed by both the respondent to argue the matter despite of saying the appellant is not available to substantiate his case.
12. The PIO has filed reply to the complaint hereby annexing the copies of the covering letter by which the information was furnished to the appellant . No doubt that the application u/s 6(1) of the RTI Act was not responded within specified time under the RTI Act. There is delay in responding the same. However the PIO has tried to justified the said delay vide their reply and has relied upon the office memorandum issued by him to concern dealing hand who was maintaining the office record.
13. The prayers of the Complainant are in the nature of penal action either by granting of penalty of by compensation. The strength of evidence required in such proceedings is laid down by the Hon'ble High 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"***

Proving certain facts raised/alleged by complainant always rests on him under no circumstances burden shifts on the opposite party. In other words the onus is on the

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complainant to prove that information furnished to him was incomplete and incorrect and information was malafidely denied to him.

14. By continuous absent of the complainant and on failure to produce any evidence, the complainant has miserably failed to discharge his burden. It appears that he is not interested in the present proceedings as such not made himself available before this commission to substantiate his case. On the contrary the respondent No.1 PIO have showed his bonafide by furnishing the information at first point of time and then again before the First Appellate Authority .
15. In the above given circumstances, I am unable to concede to the request of complainant for penalty & compensation.

Accordingly the complaint stands disposed off.

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

Sd/-

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

