

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Complain 34/SIC/2015

Shri Bandhagit Nadaf,
No.9,3rd floor, Paes Avenue Bldg.,
F.L.Gomes Road,
Vasco-Da-Gama, Goa. Appellant

V/s.

1.The Public Information Officer,(PIO)
Ms. Sharda Naik Headmistress/SPIO,
O/o the Municipal High School Vasco,
Vasco-Da-Gama, Goa.

2.The First Appellate Authority,
Shri R.S. Samant,
The Addl. Director/Dy.Director of Education,
Directorate of Education, Porvorim Goa.
..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on:26/11/2015

Decided on: 05/05/2017

ORDER

1. Facts in brief which gives rise to the present complaint are as under.
2. The complainant Shri Bandhagit Nadaf herein by his application dated 6/7/15 filed u/s 6(1) of the RTI Act, 2005 sought certain information from the PIO of the office of the Directorate of Education, Government of Goa, Porvorim concerning the Municipal High School, Vasco Da gama under several points therein.
3. According to the complainant the original application was transferred u/s 6(3) to the PIO of the Municipal High Vasco by the PIO of Directorate of Education who is Respondent No. 1 herein.
4. The said application was replied by respondent No. 1 PIO herein on 10/9/2015. However according the complainant the reply was given by the PIO was vague and evasive, as such he preferred first

appeal with the respondent No. 2 First appellate authority on 16/9/15.

5. The Respondent No. 2 FAA by an order dated 15/10/2015 upheld the say of PIO and disposed the said appeal .
6. Being aggrieved by the order of FAA and the action of both the Respondents , the complainant landed before this commission by way of complainant u/s 18 thereby requesting for direction for providing him correct information free of cost and for invoking penal provisions as against both the Respondent for knowing denying correct information to the complainant with malafide intentions.
7. Notices were issued to the parties. Despite of due service of notice the complainant opted to remain absent. The Respondent No. 1 were represented for Advocate S.Pereira . Respondent No. 1 PIO filed his replies on 15/03/17. No copy of the reply could be furnished to the Complaint in view of his continuous absent.
8. The respondent No. 1 PIO Smt. Sharda Naik submitted that the reply may treated as argument . opportunity was given to the complainant to file written argument if any within 10 days and as no written argument was filed, this commission decided to disposed the present complaint based on the available records in the file.
9. In the present complaint, the complaint has sought prayer for furnishing the information free of cost and for inspection and for invoking penal provisions as against both the respondents.
10. The point arises for my determination are as under;
 1. Whether the complainant entitle for information in an complaint or not ?
 2. Whether the delay in furnishing information was purposely and with malafide intention .
 3. Whether the first appellate authority can be penalize u/s 20(1) and 20(2) of RTI Act.

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."

12. 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".

- 13.** By applying the same ratio, this Commission cannot entertains complaint with regards to application dated 06/07/15. 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 earring PIO in cases were 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.

14. 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 .
15. It is s a specific case of the complainant the Respondent no. 1 PIO failed to furnish the required information as per the application of the complaint within the stipulated time . It is the further case that the said application was transferred to respondent no. 1 PIO by the PIO for Directorate of Education. However he is silent and has not specified the date on which the said transferred was done u/s 6(3) of the RTI Act to the Respondent No. 1 herein.

The initial application filed U/s 6(1) though dated 6/7/15 , itself reveals that the said application was sent to the PIo of Directorate of Education by the complainant by speed post only on 6/8/15 which inturn was sent to respondent No.1PIO . Considering the above fact I hold that the reply of the PIO dated 10/9/15, relied by the complaint himself is well within time. The observation have also made by the Respondent no.2 FAA in their order dated 15/10/15 of complainant having posting the said application on 6/8/2015 and the said fact was brought to the notice of complainant by FAA at the time of hearing. The letter of transfer u/s 6(3) have not been relied by complainant. The clarification could not be sought from the complainant in view of his continuous absence.

The first appeal was filed by the complainant on 6/9/15 which was disposed on 15/10/15 well within specified as per the provision on 19(1) of the RTI Act.

16. Since the prayers 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 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"

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

18. By continuous absence 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 has showed his bonafide by furnishing the information at first point of time.

19. 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