

## **GOA STATE INFORMATION COMMISSION**

Kamat Towers, seventh Floor, Patto, Panaji, Goa

Complaint no.279/SCIC/2010

Shri Kashinath Shetye,  
r/o Bambino Building,  
Alto Fondvem,Raibandar,  
Tiswadi, Goa. -----Complainant

V/S

The Public Information officer  
Executive Engineer,  
Works Division XXIII,  
PWD, Bicholim, Goa. -----Opponent

### **CORAM :**

**Shri Prashant S.P. Tendolkar,**  
State Chief Information Commissioner,

**Filed on: 12/3/2010**

**Order Passed on: 3/2/2017**

### **ORDER**

1.On going through the file, it is found that complainant herein had not filed the first appeal against the rejection/deemed rejection of the request by the PIO as is required u/s 19(1) of The Right to Information Act 2005. Complainant has approached this commission u/s 18 of The Right to Information Act 2005,(Act) seeking information as also penalty.

**2.** Earlier this commission has found that there are several such files pertaining to complaints pending since 2008. It was further observed that during the individual hearings of such complaints, most of the complainants have remained absent continuously. Also PIOs have challenged the maintainability of such complaints before the commission as no first appeals were filed. These objections were raised in the backdrop of the judgment of the Hon'ble Supreme Court of India dated 12/12/2011 in Civil Appeal Nos. 10787-10788 of 2011 (**Chief Information Commissioner and another v/s State of Manipur and another**).

**3.** As a larger intricate legal issue of maintainability of such complaints without first appeal, was involved in several matters, this commission felt it necessary to constitute full bench of the commission to hear such issue. Accordingly a full bench of the commission was constituted. All the complaints were heard in a common hearing on 20/4/2016. By order dated 27/5/2016 passed by the full bench of this commission, it is held that the complaints u/s 18 of the RTI Act cannot be entertained unless the complainant exhausts his remedy of first appeal u/s 19(1) of the act seeking enforcement of his fundamental claim of seeking information.

**4.** The present complaint is also involving the

same issue and I hold that the present complaint filed against rejection of the application for information is not maintainable. Considering that the present complaint is being proceeded before this commission under the bonafide belief that such complaints are maintainable, I find that the interest of the complainant is required to be protected.

**5.** The present complaint therefore stands closed. Complainant is granted liberty to file first appeal under section 19(1) of The RTI Act in respect of the rejection/refusal of his request for information vide his application, dated 22/2/2010, within thirty days from the date of receipt of this order. If such an appeal is filed, the first appellate authority shall decide the same on merits in accordance with law, without insisting on the period of Limitation.

The rights of the complainant herein to file complaint in case the complainant is aggrieved by the order of the first appellate authority in such appeals, are kept open .

This order be communicated to the parties along with copy thereof, free of cost. Proceedings stands closed.

**Sd/-**  
**(Shri Prashant S.P. Tendolkar)**  
State Chief Information Commissioner