

GOA STATE INFORMATION COMMISSION

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

Appeal No. 23/SCIC/2015

Mr. Nilesh G. Naik,
H.No. 318/2,Pattelem,
Rivona, Sanguem, Goa.

..... Appellant

V/s.

1, The Public Information Officer,
Utkarsh High School,
Rivona, Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 15/08/2015

Decided on: 20/02/2017

ORDER

1. The facts in brief which gives rise to the present complaint are as under:-

The Complainant Shri Nilesh G. Naik by his application dated 07/10/2014 sought several information in respect to the appointment of one peon reserved for OBC category on regular basis with respect to the walk in interview held on 13/6/14 from the Principal /PIO , Utkarsh High School, Rivona ,Goa

2. The said application was responded the by the Respondent No. 1 on 5/11/2014 interalia informing the complainant that the required information will be furnished only after the instruction from the Director of Education. Subsequently Respondent No. 1 PIO by his reply dated 12/11/14 provided him only Xerox copy of the information .

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3. Since the Respondent No. 1 PIO malafidely refused to provide him certified copies of the documents, the complainant preferred the first appeal before the Director of Education who is the Respondent No.. 2 herein being first appellate authority.
4. The Respondent No. 2 first appellate authority also failed to passed an appropriate order in the appeal filed before them u/s 19(1) of Act.
5. Being aggrieved by the action of both the Opponents the present Complaint came to be filed before this Commission on 15/09/2015 with the sole prayer to compel the Opponent no. 1 PIO to provide him the information free of cost.
6. After notifying the parties the matter was taken up for hearing. The Complainant was absent despite of due service. Opponent No. 1 was represented by Dinananth Prabhudessai and Opponent No. 2 FAA was absent.
7. Reply came to be filed on behalf of Opponent, No. 1, PIO on 30/1/2017 no reply came to be filed on behalf of Opponent No. 2 FAA.
8. Since the Complainant was continuously absent this Commission has no other option then to hear the arguments of the Opponents no. 1. The opportunity was given to the Complainant to file his written synopsis however the complainant failed to file the same on record.
9. It is contention of the Respondent No. 1 PIO that the application of the Complainant dated 7/10/14 was duly replied and information also furnished to the Complainant on 12/11/14 as such. It is their contention that he has shown bonafide in furnishing the information.

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- 10.** 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 entitled for information in complaint or not."

- 11.** 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.

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" 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.** In view of the above rulings the information Commissioner has got no powers under section 18 of Right to information Act to provide access to the information and as such prayer cannot be granted.

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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.

Sd/-

(Ms. Pratima K. Vernekar)

State Information Commissioner

Goa State Information Commission,

Panaji-Goa

