

GOA STATE INFORMATION COMMISSION

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

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

Complaint No.11/SCIC/2014

Shri R. S. Sawant,
C/o K. P. Digde,
R/o Flat No.1, Colaco Bldg.,
Nr. Bar D'Souza, Mangoor Hill,
Vasco –Goa.

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Complainant

V/s

The Dy. Collector & SDO/PIO,
South Goa Collectorate,
Margao-Goa.

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Opponent.

Filed on: 03/03/2014

Decided on: 02/05/2017

1) FACTS:

a) The Complainant by his application filed under section 6(1) of the Right to Information Act 2005 (Act for short) sought information from the PIO, Office of the Chief Secretary Goa, who by exercising the powers u/s 6(3)(ii) of the act transferred the same to PIO, Goa Coastal Zone Management Authority (GCZMA) to furnish the said information as the same was held by it.

b) By letter dated 26/12/2012, the PIO, GCZMA transferred the said request to Dy. Collector Marmugao, u/s 6(3) (ii) of the act to furnish the required information to complainant. A copy of the same was also sent to the complainant. On a representation by Complainant, dated 13/02/2013, the PIO GCZMA issued a fresh letter dated 19/2/2013 u/s 6(3)(ii) to PIO, Dy. Collector Salcette to furnish the information. Complainant sent reminder to PIO, Dy. Col Salcette regarding the application.

c) As no information was furnished, complainant filed first appeal before the first appellate Authority (FAA) who by order, dated 16/01/2014, directed the PIO, Dy. Collector Salcette to furnish the information. In spite of the said order, no information is furnished but by letter, dated 30/1/2014, informed the complainant that the information is not available. Hence complainant has approached this Commission with a complaint u/s 18 of the act.

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d) After notifying the parties the matter was taken up for hearing. On going through the records it was noticed that the information as was sought, was pertaining to a demolition as per the orders of Hon'ble High Court and GCZMA. Hence notice was issued to it for their say but it failed to appear. Commission therefore proceeded to deal with the matter based on the records.

e) PIO has filed its reply on 05/03/2016. According to PIO the information sought is regarding the expenditure incurred in undertaking a demolition/ removal of illegal road, which demolition was done pursuant to the orders of GCZMA. Hence such records would be available with said authority. According to him, his authority i.e. office of Dy. Collector Salcette is only an executing authority. That the demolition was activated by GCZMA pursuant to the order of Hon'ble High Court. In the same reply the PIO also prayed for quashing of the order of FAA.

f) The Complainant filed his written arguments. According to complainant as the order for finishing information is passed by FAA, the PIO has no ground to refuse information. According to the Complainant as the order of FAA is not challenged it has resulted into a finality. Complainant further submitted that there are deliberate attempt on the part of PIO not to furnish information. Complainant has submitted that the information has been withheld by the PIO inspite of PIO holding the same.

2) FINDINGS:

a) I have perused the records, the Complainant in the present complaint has prayed for reliefs viz (i) direction to the respondent PIO to forthwith furnish the entire information/documents and (ii) for penalty against PIO.

b) On close scrutiny of the facts, it is seen that the complainants had filed his application u/s 6(1) of the Act, seeking certain information. As per the complaint the said application resulted in refusal of information in terms of section 7(1) and/or (2) of the Act. Being aggrieved by such refusal the complainant filed first appeal u/s 19(1) of the act and as the order of the said authority is not complied, the present complaint u/s 18 of the Act to this Commission. Besides other reliefs, the Complainant has also sought the direction to furnish the information as sought for by application u/s 6 (1) of the RTI Act.

c) Section 18 of the Act opens with the words "*Subject to the provisions of this Act-----*"; which implies that this section operates in consonance with and not in

conflict with or independent of the rest of the provisions of the Act. Thus section 18, as per the Act cannot be said to be an independent section but is subject to the provisions of this Act. In other words section 18 does not enjoy an overriding status over other provisions, more particularly section 19. Hence both these sections are to be read together. The act provides for a second appeal u/s 19(3) against the order of the first appellate authority .

d) Considering the nature of above provisions of section 18 and 19 of the 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 lordships 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."

e) I also find a similar view expressed by the Hon'ble High Court of Karnataka at Bangalore in *Writ petition nos.19441/2012 & W.P.Nos.22981-22982/2012*.

f) Nowhere is it suggested that an information seeker cannot approach the Commission under Section 18, an information seeker is free to approach the Commission by way of a Complaint under Section 18, if his grievance is not redressed, even after the decision of the First Appellate Authority. As held above, Section 18, is "subject" to provisions of Section 19 and Section 19 provides for an efficacious remedy to the fundamental requirement of information under the Act. Such a remedy of filing first appeal would also be in conformity with the provisions of section 19(5) of the Act and grant a fair opportunity to the PIO, to prove that the denial of request for information was justified before any action of penalty is initiated against him. Seeking information by way of complaint would be violative of such rights.

In the aforesaid circumstances, present proceedings, being a complaint filed u/s 18 of the act, I am unable to grant relief in terms of para II(b) of the complaint memo as issuance of direction to furnish the information is beyond the competence of the Commission in complaint.

g) Coming to the second relief of the complaint at para II (c), is in the form of penalty. Penalty proceedings are a kin to criminal proceedings. In this context the Judgment of the Hon'ble High Court of Bombay, Goa bench at Panaji would be relevant. The Hon'ble High Court of Bombay, Goa bench at Panaji, while dealing with a case of penalty (***Writ petition No. 205/2007, Shri A. A. Parulekar V/s Goa State Information Commission and others***) has observed:

"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."

h) In the present case, as per the application of the complainant u/s 6(1) of the act, at the opening para according to complainant the demolition/ removal of the road was undertaken as per the directions of the Hon'ble High Court, dated 07/05/2012 and GCZMA, dated 24/08/2011 under the supervision of Dy. Collector (SDO) Margao. Thus the role of public Authority herein is only supervisory in nature. The decision for demolition being of other authorities i.e. of Hon'ble High Court and GCZMA, I find force in the submissions of PIO that the said records are not available with it. No doubt the Complainant's application was transferred to GCZMA, who transferred the same to the respondent herein. Such gesture on the part of GCZMA, appears to be questionable, but the complainant at all times have pointed to the respondent herein as the information provider. The complainant heavily banks on the order passed by FAA and that the PIO is required to comply with the same at any cost. Said order of FAA, reveals that there are no bases on which the FAA concludes that the information is held by respondent. The said order of FAA appears to be sketchy and without logic. The FAA has not concluded that the reply dated 31/05/2013, of PIO was erroneous.

In any case considering the fact that in the process of demolition, the Dy. Collector South Goa had only a supervisory role, I do not find any intention on the part of PIO to withhold information or deliberate attempt to suppress it.

In the light of the above discussions I find no merits in the complaint and the same is therefore disposed with the following:

ORDER

The complaint is dismissed.

Proceedings closed.

Pronounced in open proceedings.

Notify the parties.

Sd/-
(Mr. Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa