

.GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Complain 45/ SIC/20 14

Mr. Nishikant Narvekar,
R/o H.No. 309, Mardung Waddo,
Assagao, Bardez Goa.

..... Complainant

V/s.

1. The Public Information officer(PIO),
Mr. Ramesh Gauns, Secretary of
Village Panchayat of Assagao,
Bardez Goa.

.....Opponent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner.

Complaint filed on: 12/12/2014

Decided on: 16/03/2017

ORDER

1. Brief facts of the present Complaint are that;

Shri Nishant Narvekar by his application dated 07/08/2014 had sought information from Public Information Officer (PIO), Village Panchayat Assagao, Goa, under Right to Information Act as stated there in the said application .

2. The said application was not responded by the PIO within time as such deeming the same as refusal, complainant filed first appeal before Block development officer of Bardez at Mapusa on 22/09/2014. And the first appellate authority by judgment and order dated 04/11/2014 directed Respondent PIO to allow to inspect the records from the office of Village Panchayat Assagao within the period of 10 day and accordingly to furnished the necessary information to the appellant within 4 days after tracing the same.

3. Since, despite of order of First appellate authority , as no information was furnished to him within stipulated time, and being aggrieved by

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the action of Opponent No. 1, PIO the present Complaint came to be filed before this Commission on 12/12/2014, with a prayer for direction as against Respondent PIO for furnishing the required information to him interms of judgment and order dated 04/11/2014 passed by the first appellate authority. And for invoking penal provisions .

4. Notices were issued to the parties, pursuant to which they appeared. The present PIO Shri Govind P. Khalap filed the reply to the complaint thereby enclosing memorandum dated 22/2/17 issued by Block Development officer of Bardez. And relieving order dated 29/01/2016 of Shri Ramesh S. Gawas.
5. The Advocate for the Respondent submitted that when the application u/s 6(1) was filed and when the order was passed by the First appellate authority, Shri Ramesh Gawas was the PIO who has been retired from his services on superannuation. And on the said ground prayed for the withdrawal of the notice issued against him.
6. Perused the material on record the point for my determination is
 1. whether the information can be provided in the complaint.
 2. Whether the penalty can be imposed after retirement of the PIOs
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

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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.”

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

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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 7/8/2014.
10. Coming to the second point for my determination, it is not disputed that then PIO Sri Ramesh Gawas has retired from services with effect from 31/1/2016. The PIO has also filed records showing his pension records.
11. The PIO appointed by the public Authorities are its employees and a privity of contract exist between such employees and the Public Authority/Government. Such privity concludes after retirement. Section 18 read with section 20 of the Act, provides for imposition of penalties on erring PIO and not public authorities. Thus the liability for payment of penalty is personal to PIO and is recoverable from the salaries payable to such employee's payable during their services. Similarly recommendation of disciplinary action u/s 20(2) can also be issued only during the period of service as after retirement the same becomes redundant. After the retirement, what is payable to the employee are the pensionary benefits only.
12. Pension Act 1871, which governs pension of retired employees, at section (11) grants immunity to the pension holder against its attachment. Said section 11 of The Pension Act 1871 reads:

" 11)Exemption of pension from attachment: No Pension granted or continued by Government or Political consideration, or on account of past service or present infirmities or as a compassionate allowance and no money due or to become due on account of any such pension or allowance shall be liable to

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seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such court"

13. Section 60 (1) (g) of civil procedure code which is reproduced here under also bars attachment of pensioner in following words:

"1) The following particulars shall not be liable to such attachments or sale namely:

(a)

(b)

(C)

(d)

(e)

(f)

(g) *Stipends and gratuities allowed to pensioners of the Government or of a local authority or any other employer, or payable out of any service family pension fund notified in the gazette, by the central government or the state Government in this behalf and political pension."*

14. Hon'ble Apex Court in ***Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra Appeal (Civil) 1874 of 1999***, has held:

"This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands....."

15. The Hon'ble Apex court in yet another case viz. ***civil appeal NO 6440-41 of 2008, Radhe shyam Gupta v/s Punjab National Bank*** has held

" even after the retiral benefits such as pension and gratuity had been received by the any person, they did not lose their character and continued to be covered by the proviso (g) to section 60 (1) of the code of civil procedure".

16. From the reading of above provisions and from the ratio laid down by the Hon'ble Supreme court in various decisions , leaves no doubt that the benefits received under pension, gratuity by a retired person are immune to attachment. Under the circumstances this commission is neither empowered to order any deduction from his pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded.
17. In the above back ground I find that the proceedings for imposition of penalty as sought by the appellant herein are not maintainable and hence are liable to be dismissed.

Proceedings closed.

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