

GOA STATE INFORMATION COMMISSION

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

Penalty Case No. 29/2014
in Complaint No. 29/SCIC/2013

Ashok Dessai,
 R/o. 309, 3rd floor,
 Damodar Phase-II, Near Police Station,
 Margao-GoaComplainant

V/s

Shri Prakash Bandodkar,
 Then Deputy Town Planner/Public Information Officer
 (23/09/2007 to 17/09/2013)
 O/o. Town and Country Planning Department,
 Cancona-GoaOpponent

CORAM:-

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 30/10/2017

ORDER

1. The brief facts leading to present Complaint are that the Complainant Shri Ashok Dessai by his application dated 27/11/12 sought information on 7 points from the Public Information Office (PIO) of, the Dy. Town Planner , O/o. Town and Country Planning Department, Canacona Taluka at Canacona.
2. It is the case of the complainant that though the PIO addressed a letter dated 21/12/2012 was received by him by post on 31/12/12 i.e beyond 4 days of stipulated time to provide the information under the Right To Information

Act 2005. According to complainant that the payment of fees was made on 01/01/2012 and the documents were furnished to him late

3. The Complainant then approached by this Commission by way of present complaint on 2/04/2013 .
4. My Predecessor by an order dated 20/5/2014 directed to furnish the information at question No. 1 of the RTI Application and new penalty case was directed to be registered.
5. In pursuant to the order of his commission dated 20/5/14 the showcasue notice was issued to then PIo Shri Prakash Bandodkar on 31/12/14 and after appointment of this Commission on 13/9/2017.
6. In pursuant to the notice of this Commission the then PIO Shri Shri Prakash Bandodkar appeared and filed reply on showcause notice along with the enclosures .
7. The opportunities was given to the complainant to collect the same and to file written synopsis.
8. Argument of the Respondent heard.
9. On scrutiny of the records it is seen that the present complaint was filed by the complainant seeking prayer for *information and also for penalty.*
10. It is the contention of the PIO that the complaint itself is not maintainable in view of non filing of first appeal .

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 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. The High Court of Karnataka At Bangalore 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. Similar ratio is also laid down by Hon'ble High Court of Bombay, Goa Bench in Reserve bank of India V/s Rui Pereira another (2012 (2) BOM.CR 784) and also in Writ petition No. 739/2010 in Goa Cricket Association V/s Goa and others.
14. It appears that my predecessor has lost the sight of above ratio of Hon'ble Supreme Court and High Court and hence the said order is per-incuriam as the Complaint Proceeding itself was not maintainable. Though such order is passed by my predecessor , the same cannot be subscribed. The full bench of this commission in several such matters has also held that such complaint without first appeal are not maintainable.
15. The present Complaint being also similar in nature is not itself maintainable and hence any order passed therein have no legal effect.
16. The PIO in his reply has also raised several points on a merits of the complaint , however I am not inclined

to consider the same being redundant in view of not maintainability of the Complaint itself.

17. In the above given circumstances I pass following order.

Order:-

Showcause notice dated 31/12/14 and 13/9/2017 issued to then PIO stands withdrawn.

Proceedings stands closed.

Sd/-

Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa

Ak/-