

GOA STATE INFORMATION COMMISSION
Seventh Floor, Kamat Towers, Patto, Panaji – Goa.

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

APPEAL NO. 114/ SCIC/2017

Shri Nelson Fernandes,
H. No. 30, Fernandes Building,
Behind Cine Metropole,
Margao – Goa 403601. Appellant

V/s

- 1) Public Information Officer,**
South Goa Planning Development Authority,
Margao – Goa 403601.
- 2) First Appellate Authority,**
South Goa Planning Development Authority,
Margao – Goa 403601. Respondents

Filed on: 28/07/2017

Disposed on: 18/01/2018

1) FACTS IN BRIEF :

a) The appellant herein by his application, dated 23/5/2017, filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought information from the Respondent No.1, PIO under four points therein.

b) The said application was replied on 7/6/2017 informing appellant to collect information at points (1) to (2) on payment of the fees and that at points (3) and (4) being rules and regulations as available at printing press.

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However according to appellant the information as sought was not furnished and hence the appellant filed first appeal to the respondent No.2 being the First Appellate Authority (FAA).

c) According to appellant the FAA till date has failed to pass the order and hence he has approached this commission with this second appeal u/s 19(3) of the act.

d) Notices were issued to the parties, pursuant to which they appeared. The PIO on 14/11/2017 filed his reply cum legal submissions. The PIO has also filed the additional reply cum arguments on 14/12/2017. Oral arguments of the appellant were heard.

2) **FINDINGS:**

a. I have considered the application filed u/s 6(1) as also the reply to the same of PIO u/s 7(1) of the act. I have also considered the replies filed by PIO here as also the submissions of the PIO. I have also considered the submissions of the appellant.

b. By his application, dated 23/5/2017 the appellant has four requirements. At **no. 1** is the certified copy of the written intimation sent by the respondent office relating to complaint received by the office. The said information according to appellant has been furnished and hence I find no need to deal with the said point no.1.

c. Vide **point no.2** the appellant requires the certified copy of the written intimation sent by respondent authority by registered AD to complainant as well as to defendant

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relating to two complaints received from Mr. Nelson Fernandes, dated 19/5/2017. According to appellant this information is not received by him.

The PIO in the reply to the application u/s 6(1) has offered the information at points (2). The information at Point (2) is not covered under any exemption from disclosure under the act and hence the appellant entitled to receive the same.

d. The PIO has filed his reply on 14/11/2017 and has enclosed the copy of the information purportedly furnished. At para (7) of the affidavit in reply the PIO has avered that the appellant has acknowledged the receipt of documents and that he is annexing the copies of such documents particularly the reply dated 23/5/17 and of the said affidavit. It is seen that what is annexed is the receipt dated 12/6/2017 and a copy of reply dated 7/6/17. Thus the statement of PIO in his affidavit in reply that the information at point no. 2 is in fact furnished, has not been proved.

e. In the subsequent affidavit, dated 13/12/17 filed on 14/12/17 also, the PIO has relied on further documents in addition to those filed by him in earlier affidavit i.e. the letter dated 15/5/2017 from respondent Authority and copy of letter dated 4/5/2017 from Shri Neville Fernandes to the authority. None of these documents contains the copies of "intimation pertaining to complaints dated 19/5/2017", which is precisely the information sought by Appellant.

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In the aforesaid situation, I find force in the submission of appellant that the information at point (2) is still due from PIO.

- f. Coming to the information at points (3) and (4), it is seen that at said points the appellant has sought for the copies of the rules regulations and procedures. The procedures of any public Authority cannot be beyond the prescribed law in the form of acts, rules, regulations etc. Such laws are public records and the same are available and can be accessed by public notwithstanding the Right to Information Act.

In the aforesaid circumstances as the appellant herein has sought the copies of law which are in public domain, the same need not be granted under the Act.

- g. In the affidavits filed by PIO, he has tried to justify the F.A.A for not passing the order. I fail to understand as to how it is open for PIO to justify the delay on the part of FAA, when the later has nothing to say in the matter, inspite of service of notice. It is also contended by PIO that as the orders were not passed by FAA due to reasons pleaded by PIO, the matter should be remanded to the F.A.A for fresh hearing. In support of these contentions, the PIO has relied upon the orders passed by colleague Commissioner of this Commission for remand of such matters.

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h. The Hon'ble High Court of Calcutta in the case of ***Kashi Nath Munshi v/s the State of West Bengal and others Writ Petition No. 4775(w) of 2011***, has held that the appellant acquires a right to lodge a second appeal u/s 19(3) on expiration of forty five days. It is observed there in as under :

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-----*In view of the Section 19(6) of RTI Act, the first appellate authority was required to give his decision in the appeal within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty five days from the date of filing thereof, as the case might be, for reasons to be recorded in writing. Hence on expiration of forty five days from the date of filing of the appeal the petitioner acquired a right to lodge a second appeal under Section 19(3) of RTI Act. Petitioner is not entitled to approach the High Court under Article 226 of Constitution as remedy, if any, was to lodge a second appeal with the State Commission – Petition dismissed*".

From the above ratio laid down by Hon'ble High Court of Calcutta, the Commission assumes jurisdiction on the 46th day from the date of filing of first appeal before the F.A.A, if the said appeal is not disposed off. The order of this Commission as relied upon by the PIO, thus appears to be *per incuriam*.

i. Considering the above facts and the provisions of law, I find that the appellant is entitled to and has not been furnished with the information at point (2) of his application dated 23/05/2017. The information at points (3) and (4) need not be furnished being in the form of public legislation. In the light of above findings, I dispose the present appeal with the following :

O R D E R

The appeal is partly allowed. The PIO shall furnish to the appellant free of cost the information at point/para 2 of the appellant's application dated 23/5/2017, within TEN DAY'S from the date of receipt of this Order by him.

Parties to be notified.

Proceedings closed.

Pronounced in open hearing.

Sd/-
(Shri. Prashant S.P. Tendolkar)
Chief Information Commissioner
Goa State Information Commission
Panaji –Goa