

**GOA STATE INFORMATION COMMISSION**

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

**CORAM: Shri Juino De Souza: State Information Commissioner**

**Appeal No: 08/2018**

Shri. Estifano D'Mello,  
Attorney,  
Comunidade of Pilerne,,  
H.No.485,  
Near St. John de Baptist Church,  
Pilerne, Marra Bardez-Goa.

**..... Appellant**

v/s

1. Shri. Francis D'Mello  
Pilerne, Moica Vaddo,  
Bardez Goa.

**.....Respondent**

2 Administrator of Comunidade,  
North Zone, Mapusa,  
Bardez-Goa

**Relevant emerging dates:**

Date of Hearing : 30-08-2018

Date of Decision : 30-08-2018

**ORDER**

1. Brief facts of the case are that the Comunidade of Pilerne which is a body under the control of the Administrator of Comunidades has filed the Second Appeal case registered before this Commission on 11/01/2018 challenging the Order dated 20/10/2014 passed by the First Appellate Authority, Addl. Collector, North-I directing the PIO to obtain information from the clerk or escrivao of the Comunidade of Pilerne and provide the same to the Applicant within 15 days without charging any fees.
2. During the hearing the Appellant is represented by Adv. S Kamat who is present along with Adv Nuno Noronha whose Vakalatnama is on record. The Respondent No.1 Francis D'mello (original RTI applicant) is present in person. The Respondent No 2, Administrator of Comunidade of North Zone, Mapusa is absent.

3. Adv Nuno Noronha argues that the Hon'ble High Court of Bombay at Goa is writ Petition no 556 of 2017 has stayed the order of the First Appellate Authority (FAA) and which means the Order of the State Information Commission in appeal no 223/SIC/2016 is also stayed.
4. It is further argued that this Commission should entertain the present appeal case and pass an order for setting aside the Order of the FAA directing the PIO to obtain information from the clerk or escrivao of the Comunidade of Pillerne as Comunidades are not Public authorities as per the RTI act 2005 and need not furnish information.
5. The Commission has perused the material on record of the file. It is seen that the appellant has enclosed the Judgment passed by this Commission in Appeal 223/SIC/2016 dated 21/03/2017 as well as the Order passed by the Hon'ble High Court in Writ Petition 556 of 2017.
6. The Commission on perusing the Oral Judgment of the High Court in Writ Petition 556 of 2017 and finds that while the Hon'ble High Court has set aside the Order dated 11/03/2016 of the FAA in case no RTI/AC-II/APL/17/2014 which is restored back to the file of the FAA for deciding the same afresh, no such order has been passed regarding the Order of the State Information Commission in Appeal No 223/SIC/2016. On the contrary the said High Court Order clearly states at point (v) thus: 'Needless to mention that this Court has not dealt with the question of the maintainability in the Second Appeal'
7. The argument of Adv Nuno Noronha at para 3 above therefore is without substance and cannot be accepted by this Commission while deciding the present appeal.
8. As the present Second Appeal case 08/2018 is *pari materia* to an earlier Second Appeal case bearing no 223/SIC/2016 which was Dismissed as not maintainable' by this Commission on 21/03/2017 the same Order passed in appeal no 223/SIC/2016 will apply to the present appeal 08/2018.

9. The relevant portion of the said Order in Appeal case 223/SIC/2016 dated 21/03/2017 as is applicable to the present appeal case is reproduced below:

- a) The Commission after going through the submissions of the respective parties and on perusing the material on record finds that the present Second Appeal is filed by the Comunidade of Pillerne (deemed PIO) against the decision of FAA and such the appeal is not maintainable. The entire appeal process including First Appeal and thereafter Second Appeal has been created for the benefit of the aggrieved RTI applicant i.e the information seeker.
- b) Section 19 (3) of Right to Information Act, deals with the appeal procedure and the said provisions are made in the interest and for the benefit of information seeker. There is also no provision in the Right to Information Act to consider a Second Appeal filed by a comunidade body which is neither the RTI applicant nor is a Citizen of India.
- c) Commission observes that the Appellant in the appeal memo has not pointed out any provisions under RTI act by which this body has the right to challenge by way of a second appeal the Order of the First Appellate Authority (FAA).
- d) The entire appeal process created u/s. 19 of the RTI Act is purely for the use of an aggrieved RTI applicant or any person who may be treated as a third party to an RTI application and definitely cannot be for the purpose of the PIO or FAA or the Public Authority itself. The relevant provisions are reproduced below:

*"19. (1) Any person who, does not receive a decision within the time specified in sub section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority: ..4.*

*(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer...*

*..... as the case may be, u/s. 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.*

*(3) A second appeal against the decision u/s/s. (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:*

- e) Thus scope of section 19 implies that only two categories of persons may challenge the decision of a PIO a) an aggrieved RTI applicant and b) a third party who is aggrieved by a PIO's decision to disclose information pertaining to he/she/it which is treated as being confidential by that third party.
- f) Further, section 19(1) only permits an aggrieved RTI applicant to submit a first appeal to an FAA on two grounds only, *i.e.*, if no decision has been received from the PIO or if he is aggrieved by a decision of the PIO, namely, rejection of the request or partial disclosure. A third party to an RTI application may also submit a first appeal to the FAA u/s. 19(2). Therefore the first appeal process does not give any other right of appeal to any other person including any other officer of the public authority.
- g) It is not open for any other person including any officer of the public authority such as the concerned PIO or the Deemed PIO or the Public body itself to approach the concerned Information Commission challenging the order of the FAA. In a complaint or second appeal the PIO / deemed PIO and the FAA appear as representatives of the public authority which appointed them.
- h) In the matter of Chief Information Commr. And Another vs. State of Manipur and Another [(2011) 15 SCC 1], the Hon'ble Supreme Court of India explained the scheme of appeals provided for in the RT I Act in the following words: ...5

*"35. ... 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. ...*

*43. There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum.*

*It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information." [emphasis supplied]*

10. The Commission therefore comes to the conclusion that the order passed by the FAA does not give any scope to the Comunidade body through the Attorney to challenge the same before the Second Appellate Authority. The Comunidade body (Deemed PIO) is under the control of the Administrator of Comunidade (PIO) and therefore this body has no locus standie to challenge the order of FAA before this Commission.

**As such the present Second Appeal is not maintainable and accordingly stands dismissed.**

All proceedings in the Appeal case stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the Order be given free of cost.

**Sd/-  
(Juino De Souza)  
State Information Commissioner**