

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

Complaint No: 22/2018/SIC-I

Advocate Deepak Naik,
 Off. No. B-111, First Floor,
 Radha Enclave Bldg.
 Above Raymonds Showroom
 Margao, Goa.

..... Complainant

V/s

1. The Public Information Officer (PIO),
 Mamlatdar of Salcete,
 Matani Saldana Complex,
 Fatorda – Goa.

2. The First Appellate Authority (FAA),
 Deputy Collector, SDO – I,
 Mathani Saldana Complex,
 Fatorda – Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 11/06/2018

Decided on: 3/08/2018

ORDER

1. This Order disposes the present complaint filed u/s 18(1) RTI Act, 2005.

2. The brief facts leading to present complaint are as under:
 - (a) The complainant herein Adv. Deepak V Naik by application dated 15/02/2018 filed u/s 6 (1) of the RTI Act, 2005 sought certain information with reference to mutation case bearing No. MUT/70836/Darmapur/2017 from the Respondent No. 1 public information officer of the office of Mamlatdar of Salcete, Margao-Goa.

 - (b) It is the contention of the complainant that the said application was not responded by the PIO as contemplated under the RTI act as such deeming the same as refusal, the complainant filed first appeal before the Respondent No. 2 herein and the Respondent

No. 2 FAA by an order dated 29/03/2018 allowed the said appeal and thereby directed the respondent PIO to provide the information free of cost to the complainant as sought by him by his application dated 15/02/2018 within 10 days from the date of order.

- (c) It is contention of the complainant that despite of the order of Respondent No. 2 FAA as no information was furnished to him within stipulated time and being aggrieved by the actions of Respondent No.1 PIO, he had to approach this commission by way of the present complaint on 8/06/2018. In the present complaint he has sought for direction as against respondent PIO for furnishing him the requested information as sought by him, free of cost, and for invoking penal provision and compensation.
3. The matter was listed for hearing and was taken up on board after intimation to both the parties. In pursuant to the notice of this commission, Complainant was represented by Adv. S. Naik. Respondent PIO opted to remain absent despite of due service of notice without justification. Opportunity was given to him to file his reply to the said notice. Despite of that he failed to file any reply.
 4. Considering the above circumstances I hold that PIO has no reply to be filed and the averments made by the complainant are not disputed.
 5. On account of continuous absence of Respondent PIO the undersigned had no any other option then to hear the complainant and to decide the present complaint on the merits based on the records available in the file.
 6. Arguments were advanced by Complainant. He submitted that the PIO have shown scant respect to the provisions of the RTI Act. He further submitted that great hardship has been caused to him in pursuing his said application and till date no any information has been furnished to him despite of order of first appellate authority and he prayed to grant reliefs as sought by him.

7. I have scrutinized the records and also considered the available in the file.

The point for my determination are:

1. Whether the information can be provided in the complaint.
2. Whether the penalty can be imposed on erring PIO for delaying the information.

8. While dealing with issue, whether information can be provided in complaint, 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 honored 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."

9. 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"

10. By applying the same ratio, this Commission has no powers to provide access to information which have been requested for any person or which have been denied to him. The only order which can be passed by the commission, as the case may be, u/s 18 is an order of penalty provided u/s 20 of RTI act. However before such order is passed the commission must be satisfied that the intention of the Respondent PIO was not bonafide.
11. I have gone through the records, the complainant filed application u/s 6(1) of the RTI Act on 15/02/18. U/s 7(1) of RTI act the PIO is required to respond the same on or before the 30th day. In the present case it is found that the PIO has not responded to the said application of the complaint with the said stipulated period either by furnishing the information or rejecting the request. It is also not the case of PIO that the information has been furnished to the complainant or that he has responded to his application. The PIO has also not given explanation for not responding the said application nor for non compliance of the order of the FAA.
12. The Hon'ble Gujarat High Court in special civil Application No.8376 of 2010 case of Umesh M. Patel V/s State of Gujarat has held that Penalty can be imposed if FAA order not complied. The relevant para 8 and 9 is reproduced herein.

"Nevertheless, I cannot lose sight of the fact that the petitioner did not supply information, even after the order of the appellate authority, directing him to do so. Whatever be the nature of the appellate order the petitioner was duty bound to implement the same, whether it was a speaking order or whether the appellate authority was passing the same after following the procedure or whether there was any legal flaw in such an order, he ought to have complied with the same promptly and without hesitation. In that context, the petitioner failed to discharge his duty."

13. Yet in another case the Hon'ble Delhi High Court in W.P. (C) 3845/2007; Mujibur Rehman versus central information commission while maintaining the order of commission of imposing penalty on PIO has held;

"Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

"In the above circumstances, Court is of the opinion that the impugned order to the extent it discharges the sixth respondent of the notice under Section 19 (8) and does not impose the penalty sought for has to be declared illegal. In this case, the penalty amount (on account of the delay between 28.12.2005 and the first week of May, 2006 when the information was given) would work out to Rs.25,000/-. The third respondent is hereby directed to deduct the same from the sixth respondent's salary in five equal installments and deposit the amount with the Commission."

14. The Hon'ble Bombay High Court Goa bench in writ petition No.304/2011 Johnson V. Fernandes V/s Goa State information commission; AIR 2012 Bombay 56 has observed, at para 6

"Nothing prevented the petitioner for furnishing the information to Respondent de-hors the appeal. In fact, if the petition is intended to furnish the information to Respondent (information seeker) he could have communicated it without waiting for Respondent No. 2 (appellant) to file an appeal."

The facts in the said case information was supplied for the first time before the first appellate authority The Hon'ble High Court dismissed

the appeal of the PIO by upholding the order of this commission wherein the penalty of Rs. 2000/- was awarded for failure to supply information in accordance with the provisions.

15. In the above given circumstances and in view of the ratios laid down by above courts I find this is a fit case for imposing penalty on PIO and considering the date of request, I hold that sum of Rs.3000/- will be imposed as penalty to be levied against PIO.
16. In the present case Complainant has also prayed for compensation for the harassment and agony caused to him by the Respondent for not providing information within limitation period. Considering the provisions of the act, the said cannot be granted in the present proceedings being a complaint which is beyond preview of section 19(8) (b) of RTI Act.
17. In view of above the present complaint is deposed with following order.

ORDER

1. Complaint partly allowed.
2. The Respondent No. 1 PIO shall pay a amount of Rs.3000/- (Three thousand) as penalty
3. Aforesaid total amount payable as penalty shall be deducted from the salary of PIO and the penalty amount shall be credited to the Government treasury.
4. Copy of this order should be sent to the Collector of South Goa at Margao and Director of Accounts, South Goa Margao for information and implementation.

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