

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

Complaint No. 46/2018/SIC-I

Shri Kapil Phadte,
Flat No. 3, Sukhvasta Bldg,
Behind Sunshine Laundry,
Comba, Margao Goa.
403601
Mob: 9096659929/9823915320

.....Complainant

V/s

1) The Public Information Officer,
The Asst. Director of Transport (North),
O/o. Directorate of Transport,
Panaji Goa.

2) First Appellate Authority,
Dy. Director of Transport (North),
O/o. Director of Transport,
Panaji-Goa.

.....Respondents/Opponents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 21/08/2018

Decided on: 05/10/2018

ORDER

1. The brief facts leading to the present complaint are that the complainant Shri Kapil Phadte vide application dated 13/03/2017 sought information on 3 points as stated therein from the PIO of Office of Assistant Directors of Transport, Enforcement, North at Panjim-Goa. The said application was filed in exercise of his right under sub section (1) of section 6 of RTI Act, 2005.
2. According to the complaint his said application was responded by Respondent no 1 PIO on 01/06/2018 thereby providing part of the information and he was asked to collect the information after paying the requisite amount.

3. According to the complainant, he was not satisfied by the said reply of the Respondent PIO, he preferred 1st Appeal on 29/06/2018 before the Director of Transport, being FAA who is the Respondent No. 2 herein and the Respondent no 2 did not entertain his 1st appeal on the ground that it was incomplete and he was directed to resubmit the appeal after rectifying the errors.
4. Being aggrieved by the action of both the respondents, the complainant approached this commission by way of complaint u/s 18(1) of the Right to Information Act on 21/08/2018 on the ground that the Respondent no 2 FAA has erroneously refused to admit the 1st appeal filed by him in order to shield his subordinates by denying the information. And that both the respondents have breached the mandate of the act by denying the information.
5. With the above grounds, the complainant has prayed before this commission for directions to Respondent no 1 PIO to provide him the information as sought by him vide his application dated 13/03/2017.
6. During the hearing, the complaint was represented by Adv. R Phadte. Respondent no. 1 PIO Shri. Nandkishor Arolker and Respondent no. 2 FAA Shri. Prakash Azavedo appeared and filed their respective replies along with supporting documents on 21/09/2018. The copies of both the replies were furnished to the advocate for the complainant.
7. The arguments were advanced by the advocate for the complainant and the opponents submitted to treat their replies as their arguments.
8. It is the case of the Respondent no 1 PIO that vide his letter dated 01/06/2018 he had requested the complainant to collect the copies of information on the payment of prescribed fees and he has also intimated the estimated cost for the same. It is his specific case that he has made copies of the said documents/information duly certified by him, however, the same could not be delivered due to failure on the part of the complainant to pay the prescribed fees as required before

collection of the documents. It was further contended that he is ready to furnish the same upon the payment of prescribed fees by the complainant.

9. It is the case of Respondent no 2 that complainant did not specifically pointed out the PIO against who he had grievance for not furnishing the complete information and as such he vide letter dated 05/07/2018 informed the complainant to resubmit the appeal for consideration after completing the same or rectifying the error.
10. I have scrutinised the records available in the files and also considered the submission made on behalf of parties.
11. In the present case the complainant have only sought for the relief of providing him information as sought by him vide his application dated 13/03/2017. As such the issue rests on the interpretation of sections 18 and 19 of the Act, whether they are exclusive or complimentary to each other.
12. The Hon'ble apex court while dealing with similar facts in case of Chief Information Commissioner and another Vs 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 the following the procedure under Section 19. This court is, therefore, of the opinion that Section 7 read with Section 19 provided a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such a 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 principal 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 that manner alone and all other modes of performance are necessarily forbidden.

The rationale behind these observations of apex court is contained in para (37) of the said Judgement in the 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 in para (42) of the said judgement 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. **So out of the two procedures, between section 18 and Section 19 is more beneficial to a person who has been denied access to information.**"*

13. 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 of RTI Act."

14. The present complaint being also similar in nature is itself not maintainable. Hence liable to be dismissed which I hereby do.
15. Nevertheless considering the intent and the object of the RTI Act and as the information is kept ready and the PIO still volunteers to furnish the same on payment, the complainant if so desires may collect the same from the PIO within 15 days from the date of receipt of this order after effecting due payment of requisite fees.

Notify the parties.

Pronounced in the open court.

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.

Sd/-

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