

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Complaint No.30/2018/CIC

Shri Vishal Kalangutkar
Hno. 556/B, Ashirwas Niwas,
Vodlem Bhat, Taleigao,
Panaji-Goa.

... **Complainant**

V/s

The Public Information Officer,
Department of Personnel,
Secretariat, Porvorim,
Bardez-Goa.

... **Respondent**

Filed on :14/6/2018

Disposed on:15/11/2018

O R D E R

1. On perusal and scrutiny of the records of this proceedings it is seen that the present complaint is filed by the complainant without filing first appeal u/s 19(1) of The Right to Information Act 2005(Act). In view of such a situation, before considering the merits of the complaint, it is necessary to consider the maintainability of the present complaint in the light of the judgment of the Hon'ble Supreme Court in the case of **Chief Information Commissioner and another V/S State of Manipur and another (Civil Appeals nos. 10787-10788 of 2011)**.

2. The facts in brief which gives rise to present complaint are:

- a) The complainant herein by his application, dated 23/4/2018; filed u/s 6(1) of The Right to Information Act 2005(Act) sought certain information from the PIO, Office of Chief Secretary,

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Government of Goa. By exercising the rights u/s 6(3) of the Act, the said PIO transferred the said application to the PIO, Department of Personnel, the respondent herein by memo dated 27/4/2018.

- b) By letter, dated 18/05/2018, the respondent herein called upon the complainant to inspect the concerned files, diaries, registers as are available and thereafter seek copies of the required correspondence. In the said letter it was also mentioned that the information at points (2) and (3) of the original application may be sought from concerned department as the same was not available in the said office of the respondent.
- c) According to the complainant though the request for information is not specifically rejected, it is impliedly rejected and the respondent has failed to furnish the information within time prescribed under the act. Further according to complainant he is asked to run from pillar to post to seek the information instead of transferring the request u/s 6(3) of the act and that PIO also failed to provide statements required u/s 7(8) of the act.
- d) According to complainant, in view of the above he has landed before this commission by way of complaint u/s 18 of the act.
- e) This commission by notice, dated 19/6/2018 directed the respondent to show cause as to why penalty as contemplated u/s 20(1) and/or 20(2) of the act should not be initiated against him. The PIO Shri Anil Shirodkar filed his reply on 2/7/2018. Arguments of the parties were heard. In

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the course of the arguments Adv. S. Gomes Pereira appearing for the complainant submitted that on 5/6/2018 the complainant has received the information.

3) Section (18) of the Act opens with the words “*Subject to the provisions of this Act-----*”, which implies that this section operates in consonance with and not in conflict with or independent of the rest of the provisions of the Act. Thus section 18, as per the Act cannot be said to be an independent section but is subject to the provisions of this Act. In other words section 18 does not enjoy an overriding status over other provisions, more particularly section 19. Hence both these sections are to be read together.

4) While dealing with similar facts, 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

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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 lordships 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.

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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.”

5) This Commission earlier has already dealt with a similar issue in Complaint No.171/SIC/2010. Complainant therein had filed a complaint against the order of PIO rejecting his request by invoking exemption u/s 8(1)(e) of the RTI Act. The SIC then, by his order, dated 24.06.2010 had held that in the said situation the proper course of action for the complainant therein would have been to file first appeal and adjudicate the propriety of refusal before first appellate authority.

6) Contrary to this ratio, this commission, in another complaint filed by one Mr. Rui Fereira against Reserve Bank of India, directed the PIO to furnish the information sought, though the complainant therein had not filed the first appeal against the order of PIO.

Said order landed before the Hon'ble High Court of Bombay at Goa Bench, being CRA No.113 of 2004, [**Reserve Bank of India v/s Rui Ferreira and others (2012(2) Bom.C.R.784**)] wherein the Hon'ble High court while dealing with the issue, at para (8) thereof, has observed:

“8. Further, the question that arises is whether the Commission would have entertained a complaint

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from respondent no.1 directly under Section 18 when respondent no.1 had failed to file an appeal against the order of the PIO of the Co-operative Bank rejecting the request and against the order of the Reserve Bank of India, refusing the request on the ground that the information is protected by Section 8(1)(a) of the Act. Section 18 confers power on the State Information Commission to receive and inquire into a complaint from any person in the nature of supervisory in the circumstances referred to in that Section. Thus the State Information Commission may entertain a complaint from any person who has been unable to submit a request to the PIO because no such officer has been appointed or if the PIO has refused to accept his application for information or an appeal under the Act; or whether the person has been refused access to any information requested under the Act or whose request has not been responded within the time specified under the Act etc. The case of respondent no.1 does not fit into either of the circumstances referred to under Section 18(1)(a) to (f). The PIO of the Co-operative Bank and the

RBI have rejected the request for information after considering the request in accordance with law. The Act provides for appeals against such orders vide Section 19. Section 18 commences with the words:

1)Subject to-----”

7) Contrary to the above ratio this Commission in the Complaint No 518/SCIC/2010 decided on 07/10/2010 filed before it u/s 18 of the RTI Act, had directed the PIO to

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disclose the information. Said order also was challenged before the Hon'ble High Court of Bombay at Goa in **Writ Petition No. 739 of 2010. (Goa Cricket Association v/s state of Goa and Others)**. In said petition several contentions were raised one out of the same was that if the complainant was aggrieved by rejection of his application by PIO remedy available to the Complainant was to file an appeal before first appellate authority. The Hon'ble High Court after considering the Judgments in the case of *Reserve Bank of India v/s Rui Ferreira and others (supra)* as also in *CIC v/s State of Manipur (Supra)* reversed the said order of CIC with observation :

“ 7. The fact situation in the present case is almost identical and though we may not castigate the decisions in the same harsh words, the same principle would apply. Section 18 of the Act confers jurisdiction on the State Information Commission to entertain the complaint in cases which do not include the case of refusal by the public authority to disclose the information. The remedy available to the complainant, in such a case, therefore, is by way of First Appeal before the First Appellate Authority”.

8) I also find a similar view expressed by the Hon'ble High Court of Karnataka at Bangalore in *Writ petition nos.19441/2012 & W.P.Nos.22981-22982/2012*.

9) On careful analysis of the above decisions of the Hon'ble High Court in the case of *Goa Cricket Association (supra)* and *Reserve Bank of India (supra)* and the Hon'ble Supreme court in the case of *State of Manipur (supra)*, nothing remains to be discussed further. The issue

regarding maintainability of the complaints u/s 18, seeking information, without filing appeals u/s 19(1) of The RTI Act, as involved herein, is laid at rest and the position of law is laid down as above. The facts involved in the case in hand and those before the Hon'ble High Court and the Hon'ble Supreme court are identical.

10) Nowhere is it suggested that an information seeker cannot approach the Commission under Section 18, but he can do so only after he exhausts the alternate and efficacious remedy of First Appeal, before approaching the higher forum. Judicial institutions operate in hierarchical jurisprudence. An information seeker is free to approach the Commission by way of a Complaint under Section 18, if his grievance is not redressed, even after the decision of the First Appellate Authority. As held above, Section 18, is "*subject*" to provisions of Section 19 and Section 19 provides for an efficacious remedy to the fundamental requirement of information under the Act. Such a remedy of filing first appeal would also be in conformity with the provisions of section 19(5) of the Act and grant a fair opportunity to the PIO, to prove that the denial of request for information was justified before any action of penalty is initiated against him. Seeking penalty by way of complaint without first appeal, would be violative of such rights.

11) Earlier also this commission has found that there are several cases pertaining to complaints pending since 2008. It was further observed that during the individual hearings of such complaints, most of the complainants have remained absent continuously. Also PIOs have challenged

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the maintainability of such complaints before the commission as no first appeals were filed.

As a larger intricate legal issue of maintainability of such complaints without first appeal, was involved in several matters, this commission felt it necessary to constitute full bench of the commission to hear such issue. Accordingly a full bench of the commission was constituted comprising of CIC and both SICs. All the complaints were heard in a common hearing on 20/4/2016. By order dated 27/5/2016 passed by the full bench of this commission, it is held that the complaints u/s 18 of the RTI Act cannot be entertained unless the complainant exhausts his remedy of first appeal u/s 19(1) of the act seeking enforcement of his fundamental claim of seeking information.

12) In the circumstances I hold that the present complaint filed against implied rejection of the application for information is not maintainable. Admittedly the information as was sought is furnished to complainant. As the complaint itself is not maintainable, I find no grounds to consider other submissions of the parties being redundant.

13) In the backdrop of the above facts and the law, I hold that the present complaint is not maintainable. Consequently the same stands dismissed. Notice, dated 19/6/2018 issued by this commission to the respondent stands withdrawn.

Copy of this order shall be furnished to the parties free of cost.

Proceedings stands closed.

Pronounced in the open hearing.

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