

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

CORAM: Shri Juino De Souza: State Information Commissioner

Complaint Nos: 11, 12, 16/2018/SIC II

Shri Vivek Nilkant Amonkar,
H. No. 366, Betl Prasad,
Near Marutigad,
Curchorem, Goa – Goa.403 706

..... **Complainant**

v/s

The Public Information Officer,
The Exeutive Engineer,
Works Div- I, PWD,
4th Lift, 1st Floor, Annex Bldg.
Junta House, Panaji-403001

.....**Respondent**

Relevant emerging dates :

Date of Hearing : 09-08-2018

Date of Decision : 09-08-2018

O R D E R

S/ N	Complaint Nos.	Date of filing RTI Application	Date of reply of PIO	Date of filing First Appeal	Date of Order of FAA	Date of filing Complaint
1)	Complaint No. 11/2016/ SIC-II	26/12/2017	06/02/2018	Not Filed	No Order	26/02/2018
2)	Complaint No. 12/2016/ SIC-II	26/12/2017	06/02/2018	Not Filed	No Order	26/02/2018
3)	Complaint No. 16/2016/ SIC-II	26/12/2017	06/02/2018	Not Filed	No Order	08/03/2018

1. The above Three Complaints pertain to one and the same parties and are having same and similar subject matter as such they are combined together and disposed by one common order.
2. **BRIEF FACTS** of the Case are that the Complainant Shri Vivek Nilkant Amonkar has filed three separate direct Complaint cases before the Commission. All important dates including the dates of filing various RTI applications, dates of the reply by the PIO and finally the dates on which the Complainant has preferred Complaint cases before the commission are listed in the tabulation above.

3. It is seen that in all the above three Complaint cases, the Complainant has not filed any First Appeal with First Appellate Authority (FAA) and has instead approached the Commission directly in Complaint cases.
4. The main grievance of the Complainant is that although he had filed three separate RTI applications u/s 6(1) seeking information from the Respondent PIO, the PIO has furnished unsatisfactory replies and as such the Complainant has approached the Commission directly u/s 18 by way of three separate Complaint cases and has prayed for penalty, Compensation, for directions to the Respondent PIO to provide information free of cost and for disciplinary action against the PIO and for other reliefs.
5. **HEARING & SUBMISSIONS:** This matter has come up for hearing on two previous occasions and hence is taken up for final disposal. During the hearing the Complainant who is present in person submits that the Complaint case should be decided on merits and relies on a citation of the Delhi High Court in the case of *J.R. Mittal V/S CIC (W.P.(C) 6755/2012* stating that the Complaint cases are maintainable. He further submits that he does not need the information now but insist that penalty should be imposed on the PIO.
6. **FINDINGS:** The Commission has heard the Complainant and has also perused the file including replies filed by the PIO dated 09/05/2018 and which is received by the Complainant under his signature. Without going into the merits of the individual Complaint case, the Commission at the outset finds that the Complainant has not filed any First Appeal with the First Appellate Authority (FAA) in all the three Complaint cases.
7. If the Complainant was refused information then he should have first filed a First Appeal as per 19(1) and after exhausting this remedy should have approached the Commission either in a Complaint or Second Appeal case if still aggrieved. The issue rests on the interpretation of section 18 and 19 of The Act, on the question of whether they are exclusive or complementary to each other. ...3

8. 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 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 the observation of the 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."

"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."

Similar views have also been held by the High Court of Bombay at Goa in *Reserve Bank of India v/s Rui Ferreira and others (2012(2)Bom.C.R.784)* & in *Writ Petition No. 739 of 2010. Goa Cricket Association v/s state of Goa and Others*.

9. **CONCLUSION /DECISION:** The Commission is therefore of the view that nowhere it is suggested that an information seeker cannot approach the Commission under Section 18, but it is only after exhausting the alternate and efficacious remedy of First Appeal before approaching the higher forum as judicial institutions operate in hierarchical jurisprudence. An information seeker is always free to approach the Commission by way of a Complaint under Section 18 or a Second Appeal under 19(3), if the grievance is still not redressed after the decision of the FAA.

10. As held, 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. Seeking penalty and information by way of Complaint case without a First Appeal would be violative of such rights.

In view that the Complainant has not filed any First Appeal as per 19(1) before the FAA, all the above three Complaint cases stand Dismissed as not maintainable.

11. The Complainant however is granted liberty to file three proper First Appeals under Section 19 (1) of the RTI Act before the appropriate First Appellate Authority (FAA) against the reply of the PIO with respect to the three RTI applications dated 26/12/2017 within 30 days from the date of the receipt of the Order, i.e latest by 20th September 2018, if he so desires.
12. If such an Appeal is filed, the First Appellate Authority (FAA) will issue notices to both the Appellant and Respondent and shall proceed to dispose off the First Appeal on merits by passing appropriate speaking Orders in accordance with the RTI act. If the First Appeals are not filed within the prescribed time period and or by 20th September 2018, it will be presumed that the Complainant has abandoned his cause. The FAA accordingly need not entertain any First Appeal filed by the Complainant after 20th September 2018.
13. It is kept open to the Complainant, if he is aggrieved, with the Order of the First Appellate Authority to approach the Commission either by way of Second Appeal under Section 19(3) or by Complaint case under Section 18(3).

With these directions all three Complaint cases stand closed.

14. Before parting the Commission finds it necessary to deal with the application / representation dated 02/08/2018 filed by the Complainant *inter alia* raising apprehension that he may not get appropriate reliefs from the Commission presided by this Commissioner as the conduct clearly indicated favouritism and partiality towards the Respondent and as such to refrain from hearing the present matter in the interest of justice and fair play.
15. The Commission finds that there is no truth in allegations contained in the said representation and the apprehension raised is without any basis only because at the last hearing held on 12/07/2018, the Complainant was clearly told that the Complaint cases are not maintainable as no First Appeal has been filed and hence liable to be dismissed with liberty to file proper First Appeal as per 19(1) of the RTI act 2005 and thereafter if still aggrieved with the order of the FAA, to approach the Commission by way of a Second Appeal or Complaint case.
16. The Complainant during the hearing is shown a Judgment passed by a full bench of this Commission that had decided similar intricate legal issue of maintainability of such Complaint cases filed directly with the Commission without First appeal and which were heard in a common hearing held on 20/04/2016 and held as not maintainable and thus dismissed. A copy of the said Judgment is handed to the Complainant. If this Commission had refrained from hearing and passing orders and the said Complaint cases were to be transferred to some other Commissioner, yet the same Judgment of the full bench would apply. The said application/representation accordingly also stands Dismissed.

All proceedings in the three Complaint cases 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

