

GOA STATE INFORMATION COMMISSION

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

CORAM: Shri Juino De Souza: State Information Commissioner

Complaint No.27/SCIC/2012

Premanand N. Kadam,
P.D.A. Colony,
H. No 37 Porvorim Goa

.....**Complainant**

v/s

1. **Public Information Officer,**
O/o the District Collector,
North Goa, Panaji-Goa.

..... **Respondent**

Relevant emerging dates:

Date of Hearing : 12-11-2018

Date of Decision : 12-11-2018

O R D E R

1. **Brief facts** of the case are that the Complainant vide an RTI application dated 21/11/2011 sought certain information u/s 6(1) of the RTI act from the PIO, O/o District Collector, North Goa. The information pertains to 04 points and the Complainant is *inter alia* is seeking information regarding (i) Copy of order / and notification of Blocking P.D.A Colony Road in front of Syndicate Bank Porvorim (ii) Copy of Govt. Notice Published in Newspaper. (iii) Expenditure incurred on R.C.C wall blocking road and Tender copy. (iv) Copy of Permissions granted by Govt. of Goa / Department.
2. It is seen that the PIO has not given any reply as per 7(1) of RTI Act 2005 within the mandated 30 days period and therefore the Complainant has approached this Commission with direct complaint case under section 18 and sought for directions to provide information and for penalty and other reliefs.
3. **HEARING:** During the hearing the Complainant is absent. It is seen from the roznama that the Complainant remained absent since 03/05/2016 and was present only on one occasion i.e 14/06/2012. The Respondent Additional Collector North is represented by Shri Sagar Naik, Awal Karkun. ...2

4. **SUBMISSIONS**: Shri Sagar Naik submits that the Complaint case is not maintainable as the Complainant approached the Commission directly without exhausting the remedy of First Appeal and besides the Complainant has always remained absent and is not interested to pursue his complaint case despite being given several opportunities and as such the Complaint case should be dismissed.
7. **FINDINGS**: The Commission on perusing the material on record, at the outset without going into the merits of the case finds that the Complainant has not filed a First Appeal with the First Appellate Authority (FAA). If the Complainant was refused information by the PIO, then he the RTI applicant should have first filed a first appeal as per 19(1) and after exhausting this remedy subsequently approached the commission either in a complaint or second appeal case if still aggrieved. Also, the Complainant has remained absent, besides has not adduced any evidence nor has filed any detailed reply in support of his contentions.

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 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." "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.*

8. The Commission is of the view that an information seeker can approach the Commission under Section 18, but it is only after exhausting the alternate and efficacious remedy of First Appeal as judicial institutions operate in hierarchical jurisprudence. An information seeker is always free to approach the Commission by way of a Complaint u/s Section 18 or a Second Appeal u/s 19(3), if the grievance is still not redressed after the decision of the FAA.
9. Also the remedy of filing a First Appeal would 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 filing a First Appeal would be violative of such rights.

As the Complainant has not filed First appeal u/s 19(1) before the FAA, the Complaint case accordingly stands dismissed as not maintainable.

10. The Commission, however, grants liberty to the Complainant to file a proper First appeal with the First Appellate Authority (FAA) within 30 days of the receipt of this order, i.e latest by 20th December 2018, if he so desires. In such an event the FAA shall issue notices and after hearing the parties decide the First Appeal purely on merits by passing an appropriate speaking order. It is open to the Complainant herein, if he is still aggrieved by the order of the FAA to thereafter approach this Commission either by way of a Second Appeal u/s 19(3) or a Complaint u/s 18 as the case may be.

With these directions, all proceedings in the Complaint 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