

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

Appeal No. 17/2019/SIC-I

Public Information officer,
Our Lady of Mount Carmel High School,
Arambol, Pernem Goa.

.....Appellant

V/s.

1. Marcelino Fernandes,
House No. 176, Modio Waddo,
Arambol, Pernem -Goa.
2. Dy. Director of Education,
North Education Zone,
Mapusa Goa.

.. ..Respondents

CORAM: Ms. Pratima K. Vernekar, State Information Commissioner

Filed on: 22/01/2019
Decided on: 15/05/2019

ORDER

1. I dispose of this appeal filed u/s 19(3) of the RTI Act, 2005 against the order dated 04/01/2019 passed by the First Appellate Authority /Learned Deputy Director of Education, North Educational Zone at Mapusa, who is Respondent No. 2 herein, allowing the first appeal bearing No. NEZ/ADM/RTI/FAA/67/2018 filed before him by the Respondent No. 1 Shri Marcelino Fernandes.
2. The brief facts leading to present appeal are as under:-
 - a) The information seeker Shri Marcelino Fernandes, respondent No. 1 herein had filed application under RTI on 3/11/2018 seeking copies of 5 letters as stated therein in the said application by giving details such as to inward number and date. The said information was sought from the PIO of Our lady of Mount Carmel High School ,Arambol, Pernem-Goa in exercise of appellant's right interms of sub section (1) of section 6 of RTI Act, 2005.

- b) The said application was responded by the present applicant on 26/11/2018 denying the information to the appellant on the ground it is confidential and sensitive in nature.
- c) Being not satisfied with the reply of the present applicant PIO, the Respondent No. 1 (information seeker) filed first appeal before Respondent no. 2 , Director of Education, North Educational Zone at Mapusa on 5/12/2018 being first appellate authority and the Respondent No. 2 herein i.e. the first appellate authority vide order dated 4/1/2019 was pleased to allow the appeal and vide said order directed PIO to furnish the information to the Respondent No. 1 within 10 days .
- d) Being aggrieved by the order of Respondent No. 2 first appellate authority, the present appeal came to be filed by the PIO of the said public authority on the grounds raised in the memo of appeal thereby seeking relief of quashing and setting aside the impugned order dated 4/1/2019.
3. The matter was listed on the board and was taken up for hearing. In pursuant to the notice appellant was represented by Advocate V Korgaokar along with Advocate K. Mangeshkar . Respondent No. 1 appeared only on one occasion and there after opted to remain absent .No Reply came to be filed by both the respondents
4. Ample opportunities were given to Respondent No.1 to file his reply and to argue the matter ,despite of same the Respondent no.1 failed to do so . It appears that the respondent No. 1 is not interested in the proceedings , hence argument of the appellant were heard . Arguments were advanced on behalf of appellant by Adv V Korgaokar.
5. It is the contention of appellant she being Headmistress looks after the interest of school and the information sought for is from her custody and as such she is an aggrieved party and hence has

a right to challenge order passed by first appellate Authority. It was further contended that respondent no. 2 First appellate authority committed ignorance of law and also showed his disregard to the mandate of law laid down by the central Information commission in the case of Msnailin Tayal V/s Indian overseas bank passed on 8/10/2015. It was further contended that the order of Respondent no.2 is arbitrary, capricious and de hors the provision of RTI Act.

6. I have the perused the entire records of this proceedings also considered the submission made on behalf of the parties.
7. As the appeal is filed by PIO, before I deal with the merits of the appeal, the point arises for my determination is whether this commission has jurisdiction to entertain and decide the second appeals filed by the PIOs interms of section 19(3) of RTI Act, 2005?
8. In my considered opinion the appeal process created u/s. 19 of the RTI Act is purely for the use of an aggrieved RTI applicant or any person who may be treated as a third party to an RTI application but not for the purpose of the PIO or FAA. The relevant provisions are reproduced below:

“19. (1) Any person who, does not receive a decision within the time specified in sub section (1) or clause (a) of sub-section (3) of section 7, **or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer**, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such Officer who is senior in rank to the Central Public

Information Officer or State Public Information Officer as the case may be, in each public authority: ...

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, u/s. 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under section 19 (3) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

9. Thus scope of section 19 implies that only two categories of persons may challenge the decision of a PIO
 - a) an aggrieved RTI applicant and
 - b) a third party who is aggrieved by a PIO's decision to disclose information pertaining to he/she/it which is treated as being confidential by that third party.
10. Further, section 19(1) only permits an aggrieved RTI applicant to submit a first appeal to an FAA on two grounds only, *i.e.*, if no decision has been received from the PIO or if he is aggrieved by a decision of the PIO, namely, rejection of the request or partial disclosure. A third party to an RTI application may also submit a first appeal to the FAA u/s. 19(2). Therefore the first appeal process does not contemplate any other right of appeal vesting in any other person except to an aggrieved RTI applicant, third party or public authority.
11. Section 19 (3) of Right to Information Act, deals with the appeal procedure and the above provisions are made in the interest and for the benefit of information seeker or a third party. PIO is **the**

information provider, and not the seeker of the information Further PIO is also not covered u/s 19(2) as a third party. This is so because the third party as defined u/s 2(n) and section 11 should be a person or a public authority who's information which was of confidential nature has been directed to be furnished clearly, it does not include the PIO himself in its ambit. There is also no provision in the Right to Information Act to consider an Appeal filed by PIO's against the order of FAA as the very purpose of this Act is to provide the information.

12. In the matter of Chief Information Commissioner And Another vs. State of Manipur and Another [(2011)15 SCC 1], the Hon'ble Supreme Court of India explained the scheme of appeals provided for in the RTI Act in the following words:

"35. ... 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. 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. ...

At para 43 it has been held.

"There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a

creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information.” [emphasis supplied]

Hence ,nowhere in its detailed explanation of the scheme of section 19 does the Hon’ble Supreme Court recognize the right of a PIO to any of its officers to challenge a decision of FAA made under the RTI Act.

13. A similar issue was decided by this commission in appeal No. 07/2006, PIO Under Secretary (Revenue)V/s. V.B. Prabhu Verlekar where in it was held by this commission;

“The PIO cannot be said to be aggrieved person and cannot file second appeal against the decision of the First appellate authority before the commission u/s 19(3) of the RTI Act.”

14. The Division Bench of this commission in Appeal No. 12/SCIC/2015, Public Information Officer V/s First Appellate Authority and Shri Suryakant B Naik has adopted a similar view and has held

“The order passed by the FAA does not give any scope to the PIO to challenge the order passed by his senior officer to the second appellate authority. In the circumstances we hold that the second appeal is not maintainable as the PIO has no locus standie to challenge the said order of his superior .i.e FAA.”

15. The present appeal is not filed by the third party who is aggrieved by the PIO’s or First Appellate Authority’s decision to disclose the information pertaining to he/she/it which is treated

as been confidential by the third party. The said appeal is also not filed by the public authority, Who has got right to prefer an appeal against the decision of PIO as u/s 2(n) of the RTI Act, "Third party" includes "A Public Authority". In the present case the appeal is preferred by the PIO and not by the public authority. The contention of the PIO that she also being Headmistress is aggrieved party and as such is entitle to file an appeal, does not appeared to be probable and convincing. The PIO should act independently cannot have any personal interest in the issue and hence cannot be said to be an aggrieved party. The appellant PIO could not point out any provisions under which they came in appeal against the order of FAA.

16. The PIO in support of her contention have relied upon judgment of Central Information Commission in appeal case no. CIC/80/A/2008/00291 dated 05/03/2008, Shri V R Eliza CPIO Commissioner of Customs import and general v/s Yogita Chavan and another. However I am not inclined to accept the same as a legal precedence for this commission, this being a forum with concurrent jurisdiction. The appellant PIO could not point out any provision under which they came in appeal against the order of FAA.
17. In view of above discussion, I am of the opinion that the order passed by the First Appellate Authority does not give any scope to PIO and he has no locus standie to challenge the order passed by his own senior before the second appellate authority. Hence I hold that the present second appeal filled by the Public Information Officer is not maintainable, therefore stands dismissed.

Proceeding are accordingly 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 under the Right to Information Act 2005.

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