

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

Appeal No. 53/2019/SIC-I

1. The Principal,  
Public information officer  
St. Xavier's Higher Secondary School,  
Mapusa Bardez Goa.
2. The Secretary,  
Diocesan Society of Education  
Instito de Nossa Senhora De Piedade,  
Panaji-Goa.

.....Appellants

**V/s.**

1. Shambhu Madhukar Parab,  
H. No 306/2-B, Mirzawlada,  
Palye, Pernem, North Goa
2. Dy. Director of Education,  
The First appellate Authority/  
North Educational Zone,  
Mapusa Goa

.....Respondents

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

Filed on: 04/05/2019  
Decided on: 24/05/2019

**ORDER**

1. I dispose of this appeal filed u/s 19(3) of the RTI Act, 2005 against the order dated 31/01/2019 passed by the First Appellate Authority/Learned Deputy Director of Education, North Educational Zone at Mapusa-Goa, who is Respondent No. 2 herein, allowing the first appeal bearing No. NEZ/ADM/RTI/FAA/68/2018 filed before him by the Respondent No. 1 Shri Shambu Madhukar Parab.
2. The brief facts leading to present appeal are as under:-
  - a) The information seeker Shri Shambu Madhukar Parab, Respondent No. 1 herein had filed application under RTI on 06/06/2018 seeking detail information about the admission given in XI STD, Science stream for the academic year 2018-2019 as stated therein in the said application. The said information was sought from the Public Information Officer

(PIO) of the St.Xavier Higher Secondary School and College, Mapusa Bardez-Goa in exercise of appellant's right interms of sub section (1) of section 6 of RTI Act, 2005.

- b) On receiving of the application dated 06/06/2018, the appellant vide his letter dated 11/06/2018 addressed to the students XI Science stream, sought to obtained consent from the students, as the information sought were the personal information of the students and to which the students objected for disclosing their information to any person.
- c) Accordingly the appellant vide his letter dated 05/07/2018 informed the respondent no. 1 that there are no standard admission procedures laid down, that the institution is religious minority institution functioning as per article 30 of the constitution of India and lastly, it was informed that information cannot be furnished as there is no consent from the third party.
- d) 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-Goa on 09/01/2019 being First Appellate Authority and the Respondent No. 2 herein i.e. the First Appellate Authority vide order dated 31/01/2019 was pleased to allow the appeal and vide said order directed PIO to furnish the information to the Respondent No. 1 at point no. (iv), free of cost, within 10 days from the receipt of this order.
- e) 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 31/01/2019.

3. The matter was listed on the board and was taken up for hearing after intimating both the parties. Appellant was represented by Advocate V Korgaokar along with Advocate K. Mangeshkar. Respondent No. 1 appeared in person. Respondent no. 2 was initially represented by their legal office Shri Dayanand Chawedekar.
4. Reply filed by respondent no. 1 on 29/04/2019. The copy of the same was furnished to the appellant.
5. It is contention of appellant that he being Principal of College looks after the interest of school and the information sought for is from his custody and as such he is an aggrieved party and hence he has right to challenge the order passed by the First Appellate Authority. It was further contended that Respondent No.2 disposed the first appeal without affording much opportunity to the appellant to argue and/ or convince him. It was further contended that FAA committed patent error of law in not assigning any reasons for grant of appeal which otherwise is mandatory for the FAA. It was further contended that Respondent No. 2 not to have granted the said appeal in as much as the Respondent No. 1 was not at all aggrieved by the refusal of the application under the RTI Act. It was further contended that the impugned order is passed in ignorance of law and also showed his disregard to the mandate of law. It was further contended that Respondent No. 2 did not consider arguments advanced on behalf of the appellant and also ignored the reply filed by the appellant and as such the order of the Respondent No. 2 is arbitrary, capricious and in de hors the provisions of the RTI.
6. The respondent no. 1 contended that there are no provisions under the RTI act wherein a PIO can challenge the order of the FAA before the central/state information commission and the state Information Commission don't have jurisdiction to entertain the

same and as such appeal filed by the appellant herein needs to be dismissed.

7. I have the perused the entire records of these proceedings also considered the submission made on behalf of the parties.
8. 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?
9. 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:

10. 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.
11. 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.
12. 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.

13. 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 or any of its officers to challenge a decision of FAA made under the RTI Act.

14. 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.”

15. 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.”

16. 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 he also being Principal 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 and cannot have any personal interest in the issue and hence cannot be said to be an aggrieved party.

17. The PIO in support of his 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.
18. 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 filed 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