

# **GOA STATE INFORMATION COMMISSION**

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

**Appeal No.153/2019/SCIC**

Damodar Divkar,  
H. No.229, Nr. Shri Maruti Temple,  
Headland Sada, Mormugao – 403804. **....Appellant**

**V/s**

1) The Public Information Officer,  
O/o Chief Executive Engineer,  
Electricity Department, Vidyuth Bhavan.  
Panaji –Goa,

2) The First Appellate Authority,  
Superintending Engineer, Circle II (N),  
Electricity Department, 2<sup>nd</sup> Floor,  
Vidyut Bhavan, Panaji.

**....Respondents**

**Filed on: 27/05/2019**

**Disposed on: 21/08/2019**

## **1)FACTS IN BRIEF:**

a) The appellant herein by his application, dated 13/12/2018 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought information on 10 points as mentioned in the said application from the Respondent No.1, PIO.

b) The said application was replied on 09/01/2019. By which the PIO herein transferred information to points 3, 9 and 10 to M/s Energy efficiency services Ltd (EESL) u/s 6(3) of the act. In respect of remaining points the information was offered on payment of fees.

However according to appellant the information as sought was not furnished and hence the appellant filed

Sd/-

...2/-

first appeal to the respondent No.2, being the First Appellate Authority (FAA) on 27/03/2019.

- c) The FAA by order, dated 06/05/2019, allowed the said appeal and directed PIO to collect the information at points 3, 9 and 10 from EESL and to furnish the same to appellant at the earliest.
- d) According to appellant PIO failed to comply with order of FAA and has therefore landed before this commission in this second appeal u/s 19(3) of the act.
- e) Notices were issued to the parties, pursuant to which they appeared. The PIO and FAA on 04/07/2019 filed their reply to the appeal. In the course of filing the reply, to a query of this Commission, the PIO had submitted that the information sought pertains to a scheme floated by EESL and implemented through the respondent Authority for state of Goa and that the details sought as information is with EESL. He was therefore directed to produce on record the concerned correspondence and papers pertaining to such scheme. Accordingly on 11/07/2019 the PIO filed such copies of which appellant admitted having received its copies.
- f) On 23/7/2019 clarification from the parties were sought. In his submissions it is the contention of appellant that he has not received information to points (6) (7), (8) and (9) of his application.

According to PIO all the work regarding the sale of existing fixture was in the custody of EESL and hence it was appropriately answered. Regarding point (7) it is

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...3/-

intimated that the existing material is in possession of EESL and in respect of Point (8) and (9), which are related to point (3) is transferred to EESL u/s 6(3) of the act.

**2) FINDINGS:**

- a) Perused the records and considered the submissions of parties. The said application, dated 13/12/2018 was decided by PIO by his reply dated 09/01/2019. Accordingly information at points 3, (9) and (10) are transferred to EESL u/s 6(3) of the Act. In respect of the rest the appellant is directed to pay Rs. 6/- as information charges. Appellant is silent in his appeal memo regarding the date on which the said amount of Rs.6/- is paid.
- b) The appellant herein has sought the information. According to PIO the information sought is in respect of the scheme floated by EESL and was implemented through the state public Authority. In view of this the PIO has contended that the details sought in respect of procedure, tendering processes, estimates, disposal of existing lamps etc. is not within their purview. It is due to this aspect, the PIO was directed to clarify regarding the scheme and the details of the arrangement between the respondent Authority and EESL. Accordingly the PIO, by letter, dated 05/07/2019 addressed to the appellant clarified the scheme, copy of which is filed before this Commission. Alongwith said letters the PIO has attached the copies of letters from Ministry of power to the Chief Secretary of Goa as also the correspondence between the respondent Authority and EESL.

Sd/-

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- c) On perusal of the said correspondence it appears that based on the said requirements, the are required to enter into an agreement interse. The process of tendering and other formalities are required to be initiated by EESL. Considering this position, the information as is available with PIO then has been furnished on 09/01/2019. The appellant had not raised any grievance against the same till 27/03/2019. It is only on 27/03/2019 that the appellant has filed the first appeal with a grievance that the PIO has failed to perform his statutory duties.
- d) Assuming for a while that the PIO had not furnished the reply within time to appellants requirement, a right to move against such lapse of PIO is appealable u/s 19(1) of the Act. Proviso to section 19(1) requires that such an appeal is required to be filed within thirty days from the date of refusal or deemed refusal as contained in section 7(1) and clause (a) of sub section (3) of Section (7) of the act. by considering the reply dated 09/01/2019, such a date falls due on 10/02/2019. The first appeal to FAA was thus required to be filed at least on or before 11/02/2019.
- e) Considering the records before me it is seen that the fist appeal u/s 19(2) was filed on 27/03/2019, much after the date due for such appeal. Moreover the appellant has not made any grounds for condoning the delay. I wonder how the First Appellate Authority entertained such first appeal, which was on the face of it filed beyond the prescribed period. FAA thus ought not to have entertained the appeal.

Sd/-

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- f) While dealing with the belated first appeals without seeking condonation of delay the Hon'ble High Court of Bombay Goa bench at Panaji in *Writ Petition No. 347 of 2019 (Kadamba Transport Corporation Ltd. V/s The Goa State Information Commission and another)* has observed:

*“6. Normally, this Court would be slow to interfere with an order of remand. However, in the present case, there are at least two circumstances which require this Court to interfere with the impugned order. Firstly, as borne out from the record, the appeal is filed beyond the period of limitation of 30 days and unless and until there is a formal prayer for condonation of delay which has been allowed, the First Appellate Authority cannot be called upon to decide the First Appeal on merits. Secondly, -----  
----- Thus, no useful purpose would be served by remitting the matter back to the First Appellate Authority.”*

- g) Assuming for a while that the first appeal was validly filed, if one peruses the appeal memo, it is the sole contention of appellant that the respondent PIO has failed to perform its statutory duties and that he should be directed to perform its statutory duties. While disposing the first appeal the FAA has directed PIO to collect information from EESL and thereafter furnish to appellant. It is the appellant's grievance herein that the PIO has failed to obey the order of FAA and Collect the information from EESL.

Sd/-

...6/-

- h) Sub section (3) of section (6) has created a mandate in the cases where information is held by another public Authority. Once the application is transferred to another authority it is the said transferee authority who has to deal with the transferred request as an independent application u/s 6(1) of the act. Admittedly EESL is an independent Public Authority and not a private body. Thus the direction of FAA to PIO to collect information from EESL, which is another Public Authority was uncalled being beyond the scope of the act. Section 2(f) of the act conferred such right only to a public authority to access information from a private body over which such authority has a control.
- i) Applying the above ratio of the Hon'ble High Court to the case in hand, the first appeal before the FAA could not have been entertained by FAA. Consequently this second appeal, which could arise only out of order of first appeal, is not maintainable.
- j) Considering the above facts and circumstances I find, no merits in the present appeals and the same is not maintainable. I therefore dispose the same with the following:

**O R D E R**

The appeal is dismissed. The order dated 24/04/2019, passed by First appellate Authority in Appeal No.4/2018-2019, dated 27/03/2019, is set aside.

Order be communicated to parties.

Proceedings closed.

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

