

GOA STATE INFORMATION COMMISSION
Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No.302/2018/CIC

The SPIO/ Headmistress,
Sacred Heart of Jesus High School,
Carmona - Goa. **Appellant.**

V/s

Mr Joseph Viegas,
House No. 487/1, Betty Viegas,
Carmona, Salcete Goa **Respondent.**

Dated: 25/11/2019

O R D E R

1. Brief facts of this case is that Respondent herein sought information from the PIO vide his application, dated 01/09/2018. The PIO, who is the appellant herein, rejected the said request on the ground that the same pertains to third party and hence exempted u/s 8 of The Right to Information Act 2005(Act). The Respondent filed first appeal to First Appellate Authority (FAA) who allowed the same and directed PIO to furnish the information.

The Being aggrieved by the Order of FAA, the PIO approaches this Commission by this appeal purportedly u/s 19(3) of the Act.

2. On notifying, the parties appeared. The appellant after some hearings failed to appear before this Commission. The respondent appeared. During the presence of the appellant and her advocate this Commission has brought to their notice that in view of an earlier judgment passed by the division bench of this Commission dated 15/04/2016 *in Appeal No.12/SCIC/2015(PIO V/s First Appellate Authority*

Sd/-

...2/-

Dy. Director, North Educational Zone, Mapusa Bardez Goa, Commission has held that appeal filed by PIO is not maintainable. The advocate for appellant has expressed his intention to distinguish the same during his submissions. In spite of opportunities neither the appellant nor advocate appeared to argue the matter nor filed any written submissions.

3. On perusal of the records and considering the earlier order it is seen that in said order the Division bench of this commission has held that section (5) of The Right to Information Act makes it mandatory for every public authority to designate any officer as the PIO and further at section (19) it provides that any person who does not receive any decision or is aggrieved by the decision of such Public Information officer shall file an appeal to such officer, *who is senior in rank to the PIO*. Thus the first appellate authority, in its official designation, is an officer senior to the PIO. Thus administratively challenging the orders of senior may amount to insubordination.

Under the Act PIO is the forum conferred with original jurisdiction and the FAA as an appellate body. Thus if information is denied by PIO, he shall be subjected to the orders of appellate authority which herein is the First Appellate Authority. Judicial hierarchy also does not provide the lower forum to challenge the orders of a higher forum. The duty of lower forum is only to pass appropriate orders.

4. The present appeal before this Commission is filed by PIO against the decision of FAA. PIO is the information provider, and not the seeker of the information. Section 19 (3) of Act, deals with the appeals and the above provisions are made in the interest and for the benefit of information seeker.

Sd/-

...3/-

There is also no provision under the Act to consider such Appeals filed by PIO's against the order of FAA as the very purpose of this Act is to provide the information unless exempted u/s 8 or 9 of the act.

It is with above findings that the Division Bench of this Commission had held that no second appeal can lie at the behest of the PIO.

5. I find no grounds in the present appeal to differentiate the facts from said appeal No.12/SCIC/2015. To the knowledge of this commission said order dated 15/04/2016 in said appeal No. 12/SCIC/2015 is not set aside. I therefore find no grounds to differ in my findings.

6. In the above circumstances I hold that the present appeal, at the instance of the PIO, is not maintainable.

However it is made clear that by this order the Commission is not giving any findings on the merits of the order passed by the FAA and in case any appeal is filed by the seeker u/s 19(3) of the Act the same shall have to be decided independently.

With the above observations and considering the precedent, the appeal is dismissed. This order be communicated to parties.

Proceedings closed.

Sd/-

(Prashant S. P. Tendolkar)

State Chief Information Commissioner

Goa State Information Commission

Panaji -Goa