

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

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

**Complaint No.35/2018/CIC**

Shri Iver Ferreira,  
H. No.949, Manguairal,  
St. Estevam, Ilhas Goa,  
403106.

..... Complainant

**V/s**

- 1) The Public Information Officer,  
Section Officer (Health –II),  
Public Health Dept.,  
Secretariat, Porvorim –Goa.
- 2) Additional Secretary Health/FAA,  
Section Officer (Health –II),  
Public Health Dept.,  
Secretariat, Porvorim –Goa.
- 3) The Central Registry (GAD),  
Govt. of Goa,  
Secretariat, Porvorim –Goa.

..... Opponent.

**Date:27/06/2019.**

**O R D E R**

- 1) The facts in brief which arise in this complaint are that the appellant by his application, dated 09/04/2018 sought information from the respondent no.1, being the PIO. The said information was sought u/s ( ) of the right to Information Act 2005 (Act). By letter dated 19/04/2018 the PIO informed complainant that the information shall be furnished no sooner the file is received in said department.
- 2) On 01/06/2018 the PIO called upon the complainant to collect the information on payment of Rs.4/- as the fees. Accordingly the fees were paid but as the information which was offered were not certified or authenticated and was without any covering letter the complainant refused to receive the said information as was offered and proposed to file first appeal to the respondent No.2.

Sd/-

...2/-

It is the contention of appellant that while submitting the appeal, the office of Additional Secretary did not accept the appeal nor the Respondent No.3 herein i.e. the Central Registry, Government of Goa, Secretariat accept the appeal.

The complainant has therefore prayed for an appropriate order.

- 3) Notices were issued to parties. The Respondent No.1 PIO Smt. Meena Naik filed her reply. The facts as above are not disputed by her but the only contention raised by her is that on payment of the fees when complainant was offered the information he refused to accept the same saying that he shall file first appeal to the First Appellate Authority (FAA). It is further the case of PIO that on inquiry with the office of FAA it is learnt that neither hearing of first appeal has taken place nor any order passed by FAA.

Subsequently on 21/08/2018 the PIO filed a memo along with copies of the purported information which is dispatched to the complainant.

- 4) When the matter was posted for arguments and clarification the complainant failed to remain present and the PIO appeared and filed another reply as her arguments. By said reply the PIO, by narrating the sequence of events, has again submitted that the information as sought is furnished to complainant. Copies of such information is filed on record. The complainant has not objected to the said information as the correct information. Even otherwise the present proceedings, being a complaint, this commission has no jurisdiction to direct furnishing of information u/s 18 of the act, which is also the ratio laid down by Hon'ble Apex Court

Sd/-

...3/-

in Civil Appeal Nos. 10787-10788 of 2011 (**Chief Information Commissioner and another v/s State of Manipur and another**).

- 5) Considering the grievance of the complainant, the points which arise for my determination u/s 18 of the act are:
- (i) Whether the PIO has acted malafide while dealing with the application of the complaint u/s 6(1)
  - (ii) Whether the FAA was justified in not entering the first appeal of the complainant.
- 6) In respect of point (i) above it is on record through the memo of complaint as also not disputed by PIO that the application u/s 6(1) dated 09/04/2018 was responded on 19/04/2018 informing that the concerned file was not held by respondent authority at the relevant time. On receipt of the said file the information was offered. Though it was not collected by complaint it was in fact offered. No doubt the same was not certified but that by itself cannot be held as intentional refusal.

In the above circumstances I find that there is no deliberate or intentional denial of information by PIO. Consequently I find no grounds to invoke my powers u/s 20(1) and/or 20(2) of the Act.

- 7) With reference to the second point that the FAA failed to entertain the first appeal when tendered by the complainant, it is observed from the records that inspite of notice of this complaint, the FAA has not filed any say disputing the said plea of the complainant. The PIO has also specifically pleaded that on inquiry with FAA it is learnt that neither any hearing

Sd/-

...4/-

has taken place nor any order has been passed by FAA. Such pleadings lends support to the contention of complainant that the first appeal was not heard by the FAA.

- 8) Section 19(1) of the act provides filing of the first appeal to the FAA within 30 days from the date of expiry of the period as prescribed u/s 7(1) or 7(3) (a) or from the date when the seeker is aggrieved by the decision of PIO. In the present case, according to complainant, he had his first appeal ready but was not accepted by the FAA. Copy of such first appeal memo dated 06/06/2018 is filed on record. Rights to file first appeal are statutory and seeker cannot be deprived of the same. The act grants no discretion to the FAA, which in this case is the Additional Secretary (Health) Public Health Department, to refuse to entertain such appeal. Entertaining and deciding the first appeal is a part of the duty of the FAA. Any lapse in performing such duty would amount to dereliction of duties by FAA as are cast on him under the act. Such practice of refusal to entertain the first appeal is also not in conformity with the provisions and spirit of the RTI Act. Hence I find that necessary recommendations are required to be issued to the public authority.
- 9) Considering the above facts and in exercise of the powers granted in this Commission u/s 25(5) of The Right to Information Act 2005, I hereby recommend the Public Health Department, Government of Goa that the failure of the additional Secretary (Health), Public Health Department appointed and performing as First Appellate Authority as on 06/06/2018, to entertain first appeal of the complainant be deemed as dereliction of duties and appropriate steps be initiated as his service conditions.

Order be communicated to parties. Copies of this order be also sent to chief Secretary, as also to Health Secretary, Government of Goa, Secretariat, Porvorim-Goa for further action at their end.

Sd/-

**(Shri. P. S.P. Tendolkar)**

Chief Information Commissioner  
Goa State Information Commission  
Panaji -Goa

