

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

Complaint No. 55/2018/SIC-I

Shri Mahesh Kamat,
CD Seasons Cooperative,
Housing Society, Murida,
Fatorda Salcete Goa.

.....Complainant .

V/s.

1. Shri Sanjay Ghate,
Public Information Officer
Kadamba Transport Corporation Ltd.,
Porvorim Goa.

.....Respondent/Opponent

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

Filed on: 03/10/2018
Decided on: 09/01/2020

ORDER

1. The facts leading to present complaint as put forth by the complainant are as under;

a. That the Complainant Shri. Mahesh Kamat vide his application dated 15/06/2018 had sought for certain information from respondent no.1, PIO of office of Kadamba Transport Corporation Limited on 18 points as stated therein pertaining to the order of suspension bearing ref. No KTC/Admn/1-1/2007-08/24 dated 08/06/2007 and also pertaining to orders of compulsory retirement issued to Shri. Mahesh Kamat by Shri Ghoyal.

b. It is the contention of the complainant that respondent no.1 PIO vide letter dated 07/07/2018 informed him that he has been provided with all the inspection of files and papers exists in the file, hence no information require to be given .

c. It is the contention of complainant that PIO did not reject the request for the records made by the complainant with reason that " the record sought are not the documents /

records not created and held by public authority” Hence he was not satisfied with above reply of respondent, as such he preferred First Appeal on 13/07/2018 before the Managing Director of Kadamba Transport Corporation Limited being First Appellate Authority who disposed the said appeal on 23/08/2018 by withdrawing himself from hearing the appeal.

d. It is in contention of the complainant that he being aggrieved by the action of both the respondent is forced to approach this commission by way of complaint in terms of section 18 of Right to Information Act, 2005.

2. In this background the present complaint came to be filled by the complainant, thereby seeking various relief and direction to PIO such as (i) for providing him the information or to reject the request for information,(ii) directions to PIO to clarify the intention/meaning/contents communicated by him through the expression “Not Available” as information not generated/destroyed/misplaced, (iii) also for ordering enquiry against PIO, and (iv) for compensating him with the amount of Rs. 50,000/-for torture/harassment/civil consequences and suffering with family members.
3. The matter was taken up on board was listed for hearing. In pursuant to the notice of this commission complainant was present in person. Respondent PIO Shr. Sanjay Ghate appeared and filed his reply on 22/11/2018, 19/03/2019 and on 24/05/2019.
4. Written arguments are also placed on record by the complainant on 21/12/2018 and 09/05/2019. So also oral arguments were advanced by both the parties .
5. It is a contention of the complainant that the action is taken against him under CCS CCA rules and fundamental rules.

Information sought are the records pertaining to the decision taken by the public authority. It is the contention of the complainant that the action of suspension, Merger of suspension, penalty and pre mature retirement is already taken by the public authority and hence what was sought by him was information /records of procedures followed by the public authority in respect of the action already taken against him. It is his contention that as per section 4 (d) is entitled know the administrative decision.

6. Further it is contention of the complainant is that at no point of time he had repeated the request for previously supplied information .
7. It is his contention that managing Director had issued order of suspension dated 8/6/2000 with immediate effect and compulsory retirement and as such whatever the information created by the managing Director will come for implementation by circulation and only those records will be available with the Department. *"It is the contention of the complainant that PIO should not merely reply that the "information is not available" but should reply that is it is not the records of office"*. It is his contention that the response to the queries has to be specific and the PIO ought to seek from other Department what is meant by "not available". It is contention of complainant that when the PIO is acting under the RTI Act he is an independent person and Managing Director is not his boss and as such the duty was casted on the PIO to refer the revocation order dated 4/1/2014 to Managing Director and to seek the copy of the order with predefine period. However the PIO failed to take assistance of Managing Director and failed to seek clarification from Managing Director.
8. In the nutshell it is the case of the complainant that PIO has not decided his application and the expression is "not available" cannot be taken as information furnished under section 7 or denial of

information but the PIO ought to have replied as the information sought "is not the records of KTCL and therefore it is out of scope of section 2(f), (I)and (j) of RTI Act" .

9. It is the contention of the Respondent PIO that complainant has filed as many as 37 application and his applications are of repeated nature pertaining only one subject matter, proves his ultimate motto to harass PIO and other officials of KTCL who are performing their lawful duty.
10. It was further contended that after his appeal was dismissed on 15/6/2018 by the first appellate authority, the complainant stopped filing applications and files several applications through the other applicants to harass the PIO and the public authority without giving any public interest.
11. It was further contended that since previous application which were duly replied and since the Information was earlier provided, hence same information which was sought by complainant by application dated 15/6/2018 was not furnished and it was replied on 7/7/2018 that "he had given inspection of all the records pertains to same subject matter of corporation in respect of complainant before, hence no information is require to be given".
12. It was further contended that the complainant had files several application in the past and the PIO goes on answering more and more questions are generated out of the same in same proportion number of 1st appeal and 2nd appeal appeals are growing. It was further contended that all the information pertaining to same subject matter are uploaded on the KTCL website.
13. It was further contended that complainant has not given specifically which information was not provided to him and he had just blamed PIO and prayed for penalty. It was further contended that all information available in the file is given to complainant and

complainant has inspected files related his matters on 12/3/2018 in the office of SIC-I.

14. It was further contended that the complainant has falsely put his say to the FAA, stating " PIO has refused everything under excuse of NOT AVAILABLE". It is further contention of respondent that he never said in reply dated 7/7/2018 "information is not available" hence the complainant is lying .
15. It was further contended by PIO that complainant in his written arguments filed before this commission on 9/5/2019 at para 10 and 11 himself has stated that "records do not exists in file and this commission made observation to that effect in an order dated 9/3/2019 in appeal No. 169/2018.
16. It was further contended by the Respondent that the complainant nowhere have made any averment that PIO ought to have sought assistance of MD hence his submission in the oral arguments are afterthought .
17. It was further contended that available information is given to appellant so also information updated on website.
18. It was further contended that the Hon'ble High court in the judgment in writ No. 569/2008 at page 8 has passed remark against the complainant that he is seeking unnecessary and unwarranted information under the RTI Act.
19. It is further contention of the Respondent PIO that the information collected by the complainant from the Respondent PIO for last 3 to 4 years have not being used by the complainant for his personal gain or in public interest and as such conduct on the part of complainant reflects that the complainant is interested in harassing KTCL PIO,FAA and State information commission office and waste their valuable time.
20. It was further contended that all the documents which are exist with the corporation are given to the PIO and the documents

which does not exist in file or records are replied as "not available". It was further contended that all the files and noting the pages are serially numbered and are intact and the inspection of the same have been carried by the complainant herein on 12/3/2018.

21. The complainant in his counter arguments submitted that the entire files/records were made available to him for inspection but the records which was sought were not produced for inspection.
22. I have scrutinized the records and also considered the submission made by both the parties.
23. In the present proceedings the point for my determination are:
 1. Whether the information can be provided in the complaint proceedings ?
 2. Whether the penalty can be imposed on erring PIO as sought by the complainant?

Point No. 1

24. While dealing with issue, whether information can be provided in complaint, the Hon'ble Apex Court in the case of **Chief Information Commissioner and another v/s State of Manipur and another (civil Appeal No. 10787-10788 of 2011)** has observed at para (35) thereof as under:

"Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under 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. Such person has to get the information by following the aforesaid statutory provisions. **The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act.** It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876)1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden."*

The rationale behind these observation of Hon'ble Apex court is contained in para (37) of the said Judgment in following words.

" 37. We are of the view that section 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies, one cannot be substitute for the other."

Again at para (42) of the said judgment their Lordship have observed.

"42. 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. There is no such safeguard in Section 18. Apart from that the procedure under Section 19 is a time bound one but no limit is prescribed under Section 18. So out of the two procedures, between Section 18 and Section 19, the one under Section 19 is more beneficial to a person who has been denied access to information."

25. The Hon'ble High Court of Karnataka At Bangalore in writ Petition No. 19441/2012 and Writ Petition Numbers 22981 to 22982/2012 C/W Writ Petition No. 24210/2012 and Writ Petition Numbers 40995 to 40998/2012 (GM-RES) Between M/s Bangalore Electricity Supply Company Limited. V/s. State Information Commissioner, Karnataka information Commission has held that

"information Commissioner has got no powers under section 18 to provide access to the information which has been requested for by any person and which has been denied and that the remedy available would be to file an Appeal as provided under section 19 of the RTI Act"

26. By applying the same ratio, this Commission has no powers to provide access to information which have been requested for any person or which have been denied to him. The only order which can be passed by the commission, as the case may be, u/s 18 is an order of penalty provided u/s 20 of RTI Act. However before such order is passed the commission must be satisfied that the intention of the Respondent PIO was not bonafide.

Point No. 2

27. At the outset, it is observed by this commission that multiple RTI applications, first appeals ,the second appeals and the complaints

are filed by the complainant himself or through other information seeker to whom he was representing, seeking more or less similar information or slightly altered pertaining to suspension order bearing Ref No.KTC/ADMN/1-1/2007/08/24 dated 8/6/2007 issued by Shri Goyal to Shri Mahesh Kamat and the orders pertaining to compulsory retirement given to Shri Mahesh Kamat.

28. It also needs to mention that in appeal No. 33/18 filed before this commission, similar information sought by complainant vide his RTI application dated 17/10/2017 which was duly replied by PIO on 14/11/2017, the complainant herein had conducted inspection during the pendency of 2nd appeal proceedings on 12/3/2018 and the required information available in the said file were furnished to the complainant on 26/3/2018 in appeal No. 33/18 pertaining to same subject matter.
29. The High Court of Punjab & Haryana at Chandigarh Karamjit Singh and others V/s State Information Commission in CWP No. 5456 of 2011 has held:-

“ Since the information sought by Petitioner No. 1 as a member of Gram Panchayat under the Right to Information Act had already been supplied to petitioner No. 2 and member of the Gram Panchayat by Respondent No.2, **the State Information Commissioner, Punjab was right in declining supply of the same information time and again.** However, the impugned order to the extent of directing initiation of action against the petitioners is set aside. Writ Petition is accordingly allowed in part.”

30. The complainant herein have not pointed out what was the documents available which were not produced and furnished to him. Even otherwise the information pertaining to same subject matter is uploaded on the website.

31. The present application is filed by the complainant on 15/6/2018 after the inspection was carried out by him and hence the complainant was well aware what were the documents available in the files. The Complainant vide his written argument dated 21/12/2018 have contended that those records are not part of KTCL since he was not served with the order of suspension with predefined suspension period, neither he was served with the charge-sheet and he was not part of disciplinary proceedings. It was further contended in the said written arguments by the complainant that inspection of records revealed that no review committee is constituted or referred at the base level without which there cannot be foundation for the formation of opinion of the Board. So also he being served as the capacity of the personal manager, OSD, and recording board decision he is aware no such committee constituted for the review of service records for the purpose of compulsory retirement under FR 56 (j). Hence based on his own contention, it appears that Complainant was aware that the said information was not existing and after inspection he has confirmed and verified the said facts personally. complainant being conversant with RTI Act, and past records reveals that since year 2007, the complainant is resorting to RTI Act and filed applications under section 6(1)of RTI Act, and carried inspections of records, as such it ought to be within knowledge of complainant, that the role of PIO is only to provide information as exists and as available in records of public authority.
32. On perusing the complaint and written arguments one could gather that the complainant wants PIO to confirm that the records not maintained /not available meant "records at no point of time available with KTC" or that PIO should furnish the information by reconstructing the missing records.
33. Nevertheless, the PIO in his reply before this commission dated 22/11/2018 have clearly submitted that all documents which exist

with corporation are given by PIO and all papers and notings pages are serially numbered and were intact during inspection on 12/3/2018 and all documents which does not exist in files/records are replied as "not available". It is no where the case of Respondents that records are missing and as such reconstruction of files doesn't arise at all.

34. The arguments of the complainant that the PIO ought to have sought clarification from other Department about what is meant by "not available" and if the subordinate does not cooperate and does not provide information then PIO should declared them Deemed PIO so also ought to have sought assistance of MD who has issued the order of suspension dated 8/6/2007, in my opinion the discretion is vested entirely on Respondent PIO regarding whose assistance he should seek and how to secure the information. This arguments of the complainant could have been considered if the complainant had produce some documentary evidence on records showing a particular documents was available with MD or with personal Department, Legal Department or with Finance Department and the same was not provided to him by PIO.
35. The complainant has also relied upon the decision given by the Hon'ble High Court of Bombay at Goa in writ petition NO. 347 of 2019, Kadamba Transport corporation V/s Goa State Information Commission and had contended that the Hon'ble High Court has held that the "information sought is of third party which is covered by exemption u/s 8(j) of the Act" and hence it is contention of the complainant that those records are available with KTCL . I am not is agreement with the above contention of the complainant on 2 grounds (i) The complainant has not relied and placed on record the RTI application dated 9/8/2018 filed by the so called information seeker to the Respondent No. 1 herein

and as such this commission was not able to verify what was the information sought by the said information seeker in the said case. (ii) secondly on the perusal of the said judgment it is seen that Hon'ble high Court have made such observations on bare perusal of the application filed by the second Respondent and nowhere it is reflected in the said judgment that the said information is available on the records of the Public authority.

36. The Delhi High Court in writ petition (C)11271/09; Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's has held that ;

"The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification, it would in still a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity.** Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute."

37. In view of above discussion I find that complainant was not able to demonstrate beyond reasonable doubts factors attributing malafides on the part of Respondent. On the contrary the records of present & past proceedings shows that there was no denial of information from PIOs side and available information was time and again made available to complainant. The Public authority concerned herein even went to the extent of uploading the said information on website.
38. All this commutative factors leads me to draw conclusion that Respondent PIO has acted diligently under RTI Act and by subscribing to the above ratios laid down by the Hon'ble High Court, in case of Registrar of Companies (Supra) I am of the opinion that this is not an fit case warranting levy of penalty on Respondent.
39. The complainant has sought for compensation of Rs.50,000/- for torture and harassment caused to him by the Respondent PIO considering the provisions of Act the same cannot be granted in the present proceedings being a complainant which is beyond purview of section 19(8) of RTI Act, 2005.

In the above given circumstances, following order is passed;

ORDER

Complaint stand dismissed.

Proceedings closed.

Notify the parties. Pronounced in the open court

Authenticated copies of the Order should be given to the parties free of cost.

Sd/-

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