

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

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Complaint No. 54/2018/SIC-I

Shri Mahesh Kamat,  
CD Seasons Cooperative,  
Housing Society, Murida,  
Fatorda , Salcete Goa,  
403602

...Complainant

**V/s.**

Shri Sanjay Ghate,  
Public Information Officer (PIO),  
Kadamba Transport Corporation Ltd. (KTCL),  
Porvorim Goa.

... Respondent/Opponent

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

Filed on: 3/10/2018  
Decided on: 09/01/2020

**ORDER**

1. The facts leading to present complaint as put forth by Complainant are as under:-
  - a. That the Complainant, Shri. Mahesh Kamat vide his application dated 08/06/2018 had sought for certain information from respondent no.1, Public Information Officer (PIO) of Office of Kadamba Transport Corporation Limited on several 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 which exists in the file, hence no information or inspection required 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 filed 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 Shri. Sanjay Ghate appeared and filed his reply on 22/11/2018, 19/03/2019.
4. Written arguments are also placed on record by the Complainant on 21/12/2018, 29/04/2019, 24/05/2019, 01/11/2019. So also oral arguments were advanced by the Complainant.

5. Written arguments were filed by the Respondent PIO on 9/05/2019 and on 14/06/2019. The PIO submitted to consider his reply and written synopsis as his arguments.

**Arguments of the Complainant :-**

6. It is contention of the Complainant that the information was uploaded on the website on 15/03/2019 and he had filed RTI application on 8/06/2018 much before the information was uploaded on the website. It was further contended that the information which is sought by him is not uploaded on the Kadamba Transport Corporation Ltd., (KTCL) website.
7. It is his contention that action is taken against him and he was made to take premature retirement. It was further contended that if the disciplinary proceedings were conducted there would be article of charge issued to him and his participation would have been there in the disciplinary proceedings and the inquiry officers findings ought to have been there. He further contended that reference of suspension with predefined suspension period from 8/06/2007 to 20/06/2008 is featuring in the order of revocation dated 4/12/2014 and this order of suspension is closed by merging into order of penalty dated 20/06/2008 under specific statutory rule. It was further submitted that Managing Director of KTCL has confirmed in the affidavit filed before the Hon'ble High Court in writ petition that all conditions essential for exercise of power under FR -56(J) are satisfied and also has filed affidavit before this Commission stating that compulsory retirement of the Complainant is by following the established procedure of law. It was further contended that the inspection has been carried out by him first time in the Office of KTCL and second time in the Office of this commission on 12/03/2018 and the records of both the records matches and tallies and are intact and also matches with the information which is uploaded on the website of the KTCL, however it is his contention that this documents never existed in the records

of KTCL. It was further contended that PIO only during present proceeding have come out with fancyfull defence "information not available" and the Public Information Officer (PIO) have disclosed during this present proceedings what it is meant by not available as such it is his contention that the said fact the PIO should have disclosed him at the initial stage itself and by not disclosing the said fact has put him for harassment.

8. It was further contended that PIO ought to have dismissed/rejected his RTI application by submitting that the information is not existing and therefore not coming under section 2(f) of RTI Act, 2005.
9. It was further submitted by the Complainant that in the reply dated 19/03/2019 filed before this Commission by the PIO it has been submitted that "being third party information the same was not provided". It is contention that he has sought information pertaining to him and as such the reply of PIO is not correct. He further submitted that PIO making such contradictory submissions appears to have been done deliberately or due to the loss of mental faculty.
10. It was further contended that Hon'ble High court in writ petition 347/2019 had confirmed the contention of PIO vide his letter dated 14/08/2018 in the matter of compulsory retirement of Mahesh Kamat being 3<sup>rd</sup> party information. It was further submitted that information sought by him is mandatory requirement of law of premature Compulsory retirement which power invoked and exercise by the Public Authority of which the opponent is the PIO, as such it is his contention that information sought by him is the records of public Authority and are available with the Public Authority and cannot be denied disclosure u/s 8(j) who is taking information for himself.

11. It was further contended by the Complainant that he has permitted the PIO to upload his information on the KTCL website, however the PIO withheld from uploading the relevant information and uploaded the irrelevant information which is not sought by him under this Complaint.
12. It was further contended that the PIO is duty bound to seek the information from all unit Heads/Departments of the Public Authority and furnish such information to the Complainant. That the PIO restricted his sources to the Personnel, Finance and Legal Departments of KTCL, and failed to seek information from other unit Heads more particularly the Managing Director who has exercised the powers vested in him under FR 56(j) , issued the order under FR 56(j) and sworn the affidavit in defense in writ petitions. It is his contention that in the absence of information being sought from the Managing Director and other unit heads, it cannot be concluded that Managing Director have any unwillingness to share the information with PIO for sharing it with the Complainant.
13. It was further contended by the Complainant that he never carried out the inspection of the records and obtained copies of the record which are the subject matter of RTI application dated 8/06/2018. It was further contended that he has been time and again asking the PIO to clarify the meaning of what he meant by use of expression "not available" and the PIO is avoiding to give the said clarification and the said issue has remained unresolved.
14. It was further contended by the Complainant that PIO is preventing the complainant from getting the correct and complete information in the matter of his compulsory retirement under FR 56(j) by expressing the information as "NOT AVAILABLE" which does not amount to furnishing of information under RTI, Act and unspecific response to the application as per the judgment of the Hon. High Court in writ 761/2008.

15. It was further contended that the Respondent PIO have not furnished the information as sought by him vide his application dated 8/06/2018 and the PIO should be penalise under the provision of RTI Act for not furnishing the information which is the information/records of KTCL.

**Arguments of the Respondent PIO:-**

16. It is contention of the Respondent PIO that the complainant should file the application at one time in case of one subject matter and the Complainant has filed as many as 20 application of repeated in nature and only one subject matter and subsequent appeals with the first Appellate Authority and before the Second Appellate Authority, proves his ultimate moto to harass PIO and other officials of the KTCL who are performing official duties and the First appellate authority have made such observation vide order dated 15/06/2018 and directed PIO to dismiss or reject in limine any further application. It was further contended that aggrieved by the said order of the FAA the Complainant stopped filing application and filed several application through the other applicant to harass the PIO without having any public interest and the same is evident from the appeal filed by Shri Sushant Bhandare, Anush Kamat and one Mr. Gautam Bane.
17. It was further contended that complainant since not specified with what information required, proves that his intention is only to harass Public Authority including the Office of State Information Commission.
18. It was further contended all document which exist with the Corporation are given by the PIO and the documents which does not exist in the file are replied as not available and the Complainant is aware of the same as he has inspected the files related to his matter on 12/03/2018 in the Office of State Information Commission.

19. It was further contended by the PIO, Complainant has filed several applications in past and PIO goes on answering more and more questions are generated out of the same and in same proportion number of first and second appeal are growing. The single repetition of RTI application demand valuable time of Public Authority, First Appellate authority and Second Appellate Authority, which time could have been spent to hear another appeal or perform other public duty. Hence it is prayed that Complainant prayer being malafide and to harass Public Authority, should be discouraged.
20. Vide reply dated 9/05/2019 the PIO have submitted that Complainant at point 1a of his application asked for the resolution constituting review Committee. It was contended that the Clear reply was given to complainant by PIO in his application dated 18/12/2015 on 15/01/2016, at point 12.
21. It was further contended that to point No. 1 (e), the clear reply was given to Complainant on his application dated 29/04/2016 on 28/05/2016. So also to point 1/c and 1/d-same information is replied on 27.02.2017 to his point No. 3 and 4 of his application dated 31/01/2017. It was further contended to point 1 (a) of this application, the same has been replied to his application dated 31/01/2017 at point 10 a too. It was further submitted that to point no. 1(d) and (e) of this application has been replied in his application dated 31/1/2017 at point No. 10 (c),(d),(e). It was further contended that to point 1(f2)of this application is replied on 27.02.2017 to his application dated 31/1/2017 at point No. C 1 and 4. It was further contended that to point 1(f1) is replied to his application dated 31 /1/2017 at point 1(b). It was further contended that to point 1 (g1/3) is replied to his application dated 17/10/2017 on 14/11/2017. It was further contended that to point

- 1(k)- this note is already given to complainant which complainant himself produced before Hon,ble Forum stating that this copy is not uploaded on website, recently.
22. It was further contended that from the above the Hon'ble Forum should confirm that the complainant has misguided the forum and that the forum is aware about the harassment by the Complainant and filing false Complaint thereby wasting time.
23. It was further contended that PIO cannot be parrot of his talks. It was further contended that the Complainant himself files application to the Office of PIO and himself drive to the answers of his choice.
24. It was further contended that this Hon'ble Forum not to allow mischief of the Complainant as the Hon'ble High Court in the judgment in writ no. 569/2008 at para 8 has passed remark that the Complainant is seeking unnecessary and unwarranted information.
25. It was further contended by the Respondent that specific information as desired in para 18 of the final arguments of Complainant dated 29/04/2019 was given to the complainant prior to 12/3/18 in all aspect referred in its subject application.
26. 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.
27. It was further contended that Complainant has approached this Commission with uncleaned hands and the present Complaint has to be dismissed.



28. I have scrutinised records available in the file and also considered the submission of both the parties.
29. On perusing the enclosures more particularly the various RTI application filed by the Complainant on 18/12/2015, 29/04/2016, 31/01/2017, and 17/10/2017 and the respective replies given by the Respondent PIO interms of sub-section (1) of section (7) of RTI Act, 2005 dated 15/01/2016, 28/05/2016 , 27/02/2017 and 14/11/2017 annexed to the written arguments filed on 9/05/2019 by the Respondents visa-vis the present RTI application dated 8/06/2018, it is seen that same or similar information or altered information were sought by the Complainant herein pertaining to the same subject matter which were earlier duly replied and available information has been furnished by the Respondent PIO vide above replies.
30. The Hon'ble High Court of Panjab and Haryana at Chandigarh, Kamarjit Singh and Others V/s State Information Commission in CWP. No. 5456 of 2011 has held:-
- "The State Information Commissioner, Punjab was right in declining supply of the same information time and again."
31. Since the Respondent PIO have substantiated his case visa-vis the documentary evidence, I have no any hesitation in accepting the contention of the Respondent PIO that the information sought by the Complainant have been provided to him by the earlier replies as such I donot find any irregularity or illegality in the reply dated 7/07/2018 given by the Respondent PIO in terms of section 7(1) of RTI Act to his present RTI application dated 8/06/2018.
32. Even otherwise as per the ratio laid down by (i) 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) and (ii) by the Hon'ble High Court of Karnataka at

Bangalore in writ petition Numbers 22981 to 22982/2012 C/W Writ Petition No. 24210/2012 and Writ Petition Numbers 40995 to 40998 (GM-RES) Between M/s Bangalore Electricity Supply Company Limited V/s State Information Commissioner, Karnataka Information Commission , this Commission's has no powers to provide the information which have been requested for by any person, or denied to him and hence the relief sought by the Complainant at prayer (i) ,of direction to PIO to provide him the information in a present Complaint cannot be granted.

33. The RTI Act, 2005 is the beneficial and people friendly legislation which was enacted to bring the transparency in the affairs of the Public Authority and as such it is open for any information seeker to seek as many as information from the Public Authority in the larger public interest. At the same time the Hon'ble Apex court and the various Hon'ble High-Court has time and again has held that RTI Act should not be allowed to be misused and the abuse of the process of the court must be stopped.
34. The High Court of Judicature at Bombay Nagpur Branch in letters patents in appeal No. 276/12- in W.P. No. 3818/2010(D); State Information Commissioners V/s Tushar D. Mandlekar has held.

"It is really surprising that a thousands of documents are being sought by the Respondents from the authorities and non of the documents is brought into use. We are clearly of the view in the aforesaid backdrop that the application was filed with malafide intention and with a view to abuse the process of law."

35. In view of above judgment and as it is apparent from the records that the complainant has sought the information pertaining to the same subject matter for the past many years by way of various RTI applications and since Respondent has contended at para 26

that the complainant is not interested in information and is filing application only to harass him, it was for complainant to rebutt the same. The complainant herein, have not produced any evidence of having used the same for his personal interest or public interest.

36. It is admitted position that the inspection of the files related to matters of Complainant were given to the Complainant on 12/03/2018 and the present application dated 8/06/2018 is apparently filed after the inspection is carried by the Complainant. 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 that inspection of records revealed that no 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.
37. The role of the PIO is only to provide the information as exists and as available in the records of the Public authority. The Complainant herein has not pointed out what was the information was not provided to him and what is the information not uploaded on the website.
38. On the contrary the PIO has supported his contention that the information sought by the complainant vide application dated 8/6/2018 was earlier provided vis-a-vis supporting documents .

39. The PIO vide his reply dated 22/11/2018 have clarified that all the documents existing with the corporation are given by PIO and document which does not exist in the files/records are replied as "not available".
40. The Hon'ble High court of Delhi in writ petition (C)11271/09; in case of 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."
41. The records available shows that there was no denial of information from PIOs side and available information was time and against made available to complainant. The PIO even went to the extent of giving inspections to the complainant herein and

also took necessary steps in uploading his information on the website. Considering all those factors, I find that there was no denial of information from PIOs side and as such I am of the opinion that facts and circumstances of the present case doesn't warrant levy of penalty on the PIO and hence the relief sought in the nature of penal action against the PIO cannot be granted.

42. The Complainant has also sought for the compensation of an amount of Rs. 50,000/- for the torture and harassment caused to him by Respondent PIO. Considering the provisions of the Act, the said cannot be granted in the present proceedings being a complaint which is beyond preview of section 19 (8) (b) of RTI Act.
43. In view of the above discussion and considering the facts and the circumstances of the present case and by subscribing to the ratios laid down by the above Hon'ble High Courts, I do not find merits in the complaint proceedings, and as such are liable to be dismissed, which I hereby do.

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