

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

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Complaint No. 56/2018/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),  
Paraiso De Goa Building,  
Alto, Porvorim Goa.

... Respondent/Opponent

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

Filed on: 3/10/2018  
Decided on: 08/01/2020

**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 9/06/2018 had sought for certain information from respondent, Public Information Officer (PIO) of Office of Kadamba Transport Corporation Limited on several points as stated therein mainly pertaining to the order of suspension bearing ref. No KTC/Admn/1-1/2007-08/24 dated 08/06/2007, pertaining to orders of compulsory retirement issued to Shri. Mahesh Kamat by Shri Ghoyal .The appellant also sought other records of alteration of Birth Certificate of Shri Naik and records of litigation between Shri Kamat and Shri Kunkolikar.
  - b. It is the contention of the Complainant that Respondent 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 since 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 in terms of section 19(1) of RTI Act 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 alongwith the enclosures.

4. Written arguments are also placed on record by the Complainant on 21/12/2018, 9/05/2019, and on 01/11/2019.
5. Written arguments were filed by the Respondent PIO on 24/05/2019.

### **Arguments of Complainants**

6. It was contended by the Complainant that he had sought information from opponent/PIO, KTCL vide application dated 09/06/2018, in the matter of his compulsory retirement from the KTCL and the related matters. The records sought are of mandatory procedure of law precedent to order of compulsory retirement under FR 56(J) and disciplinary proceedings under CCS CCA Rules and the Managing Director of the KTCL, has confirmed in the affidavit filed before the Hon'ble High Court in writ petitions that all conditions essential for exercise of power under FR 56(J) are satisfied. So also the Opponent has filed an affidavit before the Hon'ble Information Commission that the Compulsory retirement of the Complainant is by following the established procedure of law. As such it is 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.
7. 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.
8. 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 but 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 from 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.

9. 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 9/06/2018. 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.
10. 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'ble High Court in writ 761/2008.
11. It was contended by the complainant 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.
12. It was further contended by the complainant that the PIO chose to harass him by not furnishing the correct and complete information, malafidely denied the request for information and knowingly gave incorrect, incomplete and misleading information

and chose to accuse the complainant with allegations connected with the health, connivances with other information seekers and other personal allegations.

13. It was further contended that the Respondent PIO have not furnished the information as sought by him vide his application dated 9/06/2018 and hence 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:-**

14. 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 pertaining 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 stop 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.
15. 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.
16. 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.

17. It was further contended by the PIO, that 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. It was further contended that 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. It is submitted that Complainant prayer being malafide and to harass Public Authority, should be discouraged.
18. Vide reply dated 19/03/2019 the PIO have submitted that all the information of Shri Mahesh Kamat has been uploaded on the KTCL website and the Complainant can access the said information.
19. 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.
20. 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.
21. It was further contended by the Respondent that specific information as desired by the Complainant was given to the complainant prior to 12/3/18 in all aspect referred in its subject application.

22. It was further contended that Complainant has approached this Commission with uncleaned hands and the present Complaint has to be dismissed.
23. I have scrutinised records available in the file and also considered the submission of both the parties.
24. Even though, there is no bar or restriction on number of legal proceedings that can be initiated, but the Hon'ble Apex court in C.A. No. 614 of 1998 (arising out of S.L.P.(C) No. 18711 of 1997) and T.C. (C) No. 1397; K.K.Modi V/s K.N.Modi has held:-

“One of the example cited as an abuse of the process of Court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which as already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.”

“It was further held that “in the case of Greenhalgh V. Mallard (19147 (2) AER 255) the court had to consider different proceedings on the same cause of action for conspiracy, but supported by different

averments. The Court, held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexation and an abuse of the process of court”.

25. The Hon’ble High Court of Delhi in writ petition decided on 27<sup>th</sup> March, 2008; N. D. Qureshi V/s Union of India and Others has held at para 12 :-

“ Moreover, from the above narrated facts, it would be apparent that the petitioner has been re-litigating for a considerable number of years. In our view on the principal of res judicata and re-litigation, the petitioner is even barred from raising new pleas for the same old relief”.

26. Hence according to the above judgment, even re-litigation for the considered number of years and raising new pleas for the same old relief should not be allowed unless special circumstances demands so.
27. It is observed by this Commission that Appeal No. 33/2018 was filed by the Complainant on 30/01/2018 against Respondent PIO which was decided by this Commission on 26/03/2018. In the said proceedings vide application dated 17/10/2017 the Complainant has sought the more or less information pertaining to his suspension and compulsory retirement order. In the said proceedings the inspection of the records was given to the Complainant herein on 12/03/2018 and the documents were accordingly furnished to him.



28. This Commission has also dealt with appeal no. 167/2017 filed by the Complainant against Respondent PIO which was disposed by an order dated 12/03/2018. The said appeal was pertaining to RTI application dated 28/06/2018 pertaining to the same subject matter as sought by the Complainant in the present proceedings. In the said proceedings the PIO furnished him information/clarification at point No. 7 and 8 since the Complainant had only raised grievance with respect to information pertaining to information at point no. 7 and 8.
29. This Commission also dealt with appeal No. 169/2018 filed by Shri Mahesh Kamat on 13/07/2018 pertaining to RTI application dated 11/04/2018 seeking more-or-less the similar information pertaining to order of suspension issued to Mahesh Kamat by Shri Goyal dated 8/06/2007 and the compulsory retirement given to him. The Respondent PIO vide his reply dated 7/05/2018 had given the list of their replies providing information to the Complainant to his earlier RTI applications and has requested complainant not to disturb the office of KTCL by repeatedly requesting for the same information. In the said case affidavit in reply was filed by the Respondent PIO affirming that all documents which exists with the corporation are given by the PIO to the Complainant herein and which does not exist in files/records are replied as not available.
30. 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 9/06/2018 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 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.

31. The role of PIO is only to provide the information as exist and as available in the records of the Public Authority. The Complainant herein has not pointed out what was the information which was not provided to him even though the said was existing in the records of public authority concerned herein.
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 in a complaint proceedings which have been requested for by any person, or denied to him and hence the relief sought by the Complainant of direction to PIO to provide him the information in a present Complaint cannot be granted.
33. At prayer 7(4) and 7(5), of the memo of Complaint, the Complainant has sought for the direction to PIO to clarify the intention/meaning/contents communicated by him through

expressions “not available” as records not created by the Public Authority or as the information not generated destroyed/ Misplaced.

34. 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” and had filed affidavit to that effect in appeal No. 169/2018 .
35. 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.”

36. The Complainant herein did not point out what was the information not furnished to him and also did not produce convincing and cogent evidence attributing malafides on the part of Respondent PIO. On the contrary the present and past records shows 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.
37. The Complainant has also sought for the compensation 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.
38. 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 Hon'ble Apex court and various Hon'ble High Courts, I do not find merits in the complaint proceedings, and are liable to be dismissed which I hereby do.

Proceedings stands closed.

Pronounced in the open court. Notify the parties

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.