

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

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Appeal No.151/2020

Indumati Naik (since deceased),
Through her legal representative,
Kum. Chandraprabha Janardhan Naik,
r/o. House No. 261/4, Agarwada,
Calangute, Bardez Goa.

.....Appellant

V/S

(1)Shri Deepak Vaigankar,
Block Development Officer/ Public Information Officer,
Block Development Officer's office,
Bardez II, Bardez – Goa.

(2)Shri Raghuvir Bagkar,
The Secretary, Public Information Officer,
V.P. of Calangute, Bardez Goa.

.....Respondents

Shri. Vishwas Satarkar

State Chief Information Commissioner

Filed on: 28/02/2020

Decided on: 15/04/2021

FACTS IN BRIEF

1. Brief facts of this case are that one Indumati Naik r/o Calangute, Bardez, Goa filed an application before the PIO Secretary, Village Panchayat Calangute, Bardez Goa, Respondent No. 2 herein above on 31/08/2019 under sec 6(1) of the RTI Act.
2. Since the Appellant did not receive any reply within stipulated time from the PIO, V.P. Secretary Calangute, she preferred first appeal, before FAA, Block Development Officer, Bardez on 31/10/2019.
3. It is the contention of the Appellant that First Appellate Authority, BDO, Bardez who is Respondent No. 1 herein above conducted several hearings but failed to pass any order.

4. In this background, the present appeal has been preferred through her legal representative Kum. Chandrabhabha Janardhan Naik under deemed refusal of information praying therein to provide the information sought for by the Appellant free of cost and penalise the Respondents under sec 20 of RTI Act.

This appeal is also filed without any formal application for condonation of delay by showing sufficient cause for delay in filing the present appeal within stipulated time.

5. From the cause title of the Appeal it reveals that, said Indumati Naik expired. However Appellant did not mention when the said Indumati Naik expired. She has either produced the copy of death certificate on record, or any pleading of whatsoever nature pleaded in the present appeal.
6. It is not in dispute that said Indumati Naik was alive when she filed First Appeal before the FAA dated 31/10/2019 as said appeal is duly signed by Indumati Naik. I therefore presume that said Indumati Naik might have passed away during the proceeding before FAA or thereafter.
7. After scrutinising the appeal memo and the documents on record this Commission raised the issue of maintainability of the appeal.
8. Adv. Ms. Shreya Arur, appearing for the Appellant submits that there is no express provision under the Act & Rules framed there under of RTI Act prohibiting the legal heirs from filing the appeal.

She also argued that this Commission have the same powers as are vested in Civil Courts while trying the civil suit and relied upon the provision of O.22 rule of 1 of CPC.

She also relied upon the Judgement of CIC New Delhi bearing No. CIC/SH/A/2016/001023 in **Central Public Information v/s Canara Bank.**

9. I have perused the records and also considered the submission made by Adv. S. Arur.

10. Right to Information is a basic fundamentals right but it is not uncontrolled. It has its limitations. The Act gives the right to information only to the citizens of India, Sec 3 of the Act defines Right to Information as under:-

*"3. **Right to information**- subject to provision of this Act, all **citizens** shall have the right to information."*

11. The Powers and functions of the Information Commission has been provided under sec 18 of the RTI Act, which reads as under:-

"18. Powers and function of Information Commissions._____

(1) Subject to the provision of this Act, it shall be the duty of the Central Information Commission or a State Information Commission, as the case may be, to receive and inquire into complaint from any person,_____

- a) xxx xxxx xxxx
- b) xxx xxxx xxxx
- c) xxx xxxx xxxx
- d) xxx xxxx xxxx
- e) xxx xxxx xxxx
- f) xxx xxxx xxxx

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

It is apparent that, under the RTI Act, while inquiring in any matter under this section have same power as vested in civil court as provided under sub-section (a) to (f) of sec 18(3) while trying the suit under **Civil Procedure Code**.

12. I have also gone through the rules framed by the Government of Goa, under sec 27 of RTI Act vide Notification No. DI/ INF /RTI / BILL/ 2005 / 6474 dated 15/02/2006 and its subsequent amendment which does not provide any express / specific provision for legal heirs or successors.

13. Section 27 of the RTI Act, empowers the Government to make rules to carry out the provision of this Act in following manner:-

"27. Power to make rules by appropriate Government.____ (1) *The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.*

(2) XXXX XXXX XXXX

(a) XXXX XXXX XXXX

(b) XXXX XXXX XXXX

(c) XXXX XXXX XXXX

(d) XXXX XXXX XXXX

(e) *the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and*

(f) *any other matter which is required to be, or may be, prescribed."*

Thus it is clear from the above provision of Law, that State Information Commission in deciding the appeal under section 19(10) of the RTI Act, should decide in accordance with section 27(2)(e) of the said Act. In other words the procedure to be adopted by the State Information Commission in deciding the appeal has to be in consonance with the rules framed by the State Government.

14. The right to appeal is a legal right and is available to every aggrieved party to a proceeding and right of the Appellant cannot be taken away unless law explicitly provided.

15. Hon'ble Delhi High Court in case of **Delhi Development Authority v/s Central Information Commission & Anr (WP (C) 12714/2009)** has observed that:-

"The Central Information Commission is not a court and certainly not a body which exercise plenary Jurisdiction.

The Central Information Commission is a creature of the statute and its powers and functions are circumscribed by the statute. It does not exercise any power outside the statute."

16. RTI Act gives the right to information only to citizens therefore appeal filed by the legal heirs of the Appellant is not tenable.

17. The fact and circumstances of the Judgement in **Central Public Information v/s Canara Bank** as argued by Adv. S. Arur is totally different and irrelevant in the present case. In that particular case the mother of the Appellant expired some 11 years back having some amount in her bank account, and she sought all details transaction from bank account and her request was denied by FAA under sec 8(1)(d) & (j) of RTI i.e information sought by the legal heir of the Appellant relates to personal information. In that case the issue in controversy was between the nominee of account holder and legal heirs of the account holder.

Here in this case in hand, Indumati Naik was the Appellant before the First Appellate Authority expired either during the pendency of first appeal or thereafter and her daughter Chandraprabha Janardhan Naik being her legal representative desires to continue in proceeding by filing second appeal.

18. Besides, this the Commission in case No. **Appeal No. 339/2019/CIC while deciding the aforesaid issue on 03/01/2020** has already decided that:-

"Legal representative / heir does not acquire any rights in the proceeding by way of Succession after death of applicant and the proceeding abate upon the death of applicant".

In view of above discussion, I am of the considered opinion that, Right to Information being basic fundamental right implicitly guaranteed by the Constitution is, personal in nature, and the said right cannot be survived after the death of claimant party.

In the above given circumstances the appeal stands dismissed as not maintainable.

Pronounced in open court.

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

Sd/-

(Vishwas Satarkar)
State Chief Information Commissioner