

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

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Appeal No. 150/2020

Shri Ruth Almeida,
r/o.Helena Apartments, 1B,
Swathantra Path,
Vasco da Gama Goa. 403802

-----Appellant

v/s

1. Public Information Officer,
Superintendent,
Directorate of Women & Child Development,
Office of Old Education Department Building,
2nd floor, 18th June Road,
Panaji Goa.

2. The First Appellate Authority,
Directorate of Women & Child Development,
Office of Old Education Department Building,
2nd floor, 18th June Road,
Panaji Goa.

-----Respondents

Shri Vishwas R. Satarkar - State Chief Information Commissioner

Filed on:-01/09/2020

Decided on:-13/08/2021

FACTS IN BRIEF

1. The Complainant herein by her application dated 04/06/2019 filed under sec 6(1) of the Right to Information Act, 2005 (Act for short) sought six point information from Opponent No. 1, Public Information Officer (PIO) of Directorate of Women & Child Development, Panaji Goa.
2. That said application was replied by PIO on 05/07/2019 stating therein that since department had filed disciplinary inquiry report to

Vigilance Department, and chargesheet is likely to be filed against her therefore her RTI application was rejected.

3. Complainant being aggrieved by the said reply of PIO filed first appeal before the Director, Directorate of Women & Child Development, Panaji being the First Appellate Authority (FAA).
4. According to the Complainant, the case before FAA was adjourned on several times and finally PIO filed her reply on 28/11/2019 and appeal was kept for final hearing. Since FAA has failed to decide the first appeal within stipulated time, Complainant preferred present complaint under sec 18 of RTI Act, with the followings prayers:

- a) That the Respondent No. 2 be directed to decide the First Appeal No. 4/2019/2708 within time bound manner or directing the Respondent No. 1 to furnish the information sought by the Appellant vide RTI application dated 04/06/2019.

- b) That the information be furnished free of cost in terms of section 7(6) of the Right to Information Act 2005.

- c) For such other orders be pass as this Hon'ble Court deems fit and proper.

5. Notices were issued to the parties, pursuant to which PIO appeared and filed reply on 02/11/2020, FAA too filed her reply on 19/03/2021. Adv. S. Talaulikar appeared on behalf of Complainant on same day and collected the reply and undertakes to file her wakalatnama on or before next date of hearing.

The present proceeding has been registered as appeal, as in the appeal memo, cause title etc, it is mentioned as Appellant and Respondent. However, the same is filed quoting under sec 18 of the Act. Section 18 of the Act does not provide for filing appeal but

complaint. And therefore maintaining the same cause title and number, the present proceeding is, hereinafter treated as complaint and dealt accordingly.

6. It is the contention of the Complainant, that the information sought is very important for her and was required on the urgent basis and delay caused by FAA in deciding the first appeal is only with the malafide intention to harass the Complainant.
7. On the other side, the contention of the PIO is that, Complainant is an employee of Directorate of Women & Child Development and she was suspended on 04/05/2018 for a major penalties.

According to PIO, information sought by the Complainant dated 04/06/2019 is the information related to the disciplinary inquiry and therefore rejected.

Further according to PIO, the charges framed against Complainant and details of witnesses were noted by the Complainant on 16/04/2019 and only to impede the process of inquiry and to influence the witnesses she filed RTI application on 04/06/2019.

8. Further according to PIO, Complainant has got every right to get the copy of information of each and every piece of paper which is relied against her in inquiry and she can seek them from the Inquiry Officer.
9. The FAA contented that, an appeal was filed before her on 12/07/2019 and matter was continuously adjourned either on the request of Appellant or due to urgent scheduled meetings of FAA and that Advocate appearing for the Appellant never opposed for adjournment.

Further she contended that on 24/10/2019, Adv. S.C.Noronha, Advocate appearing for Appellant appeared and

confronted the FAA. Thereafter for the subsequent hearing Adv. Amos D.C. remained present on behalf of the Complainant. For all the remaining hearings, none remained present. Due to absence of Complainant, the matter was dismissed on 14/01/2020.

10. It is further contention of the FAA that, she has furnished the information to the Complainant herein, through Inquiry Officer/ Presenting Officer which was sought by Complainant in her disciplinary proceedings.
11. I have perused the pleadings of both the parties, scrutinized the record and submission of PIO and FAA.
12. The present proceeding is filed under sec 18 of the RTI Act and as such the prayer (a) and (b) of the Complainant are not tenable. It may be relevant to quote the observation of Hon'ble Supreme Court here:

In **Chief Information Commission & Anr v/s State of Manipur, C.A.N. 10787-10788-2011,(2012(1) ALL MR. 948(SC)** Hon'ble Supreme Court observed in para no. 30,31 and 32 as under:

"30. It has been contended before us by the respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bonafide.

31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information.

32. In the facts of the case, the appellant after having applied for information under Section 6 and then not having received any reply thereto, it must be deemed that he has been refused the information. The said situation is covered by Section 7 of the Act. The remedy for such a person who has been refused the information is provided under Section 19 of the Act. A reading of Section 19(1) of the Act makes it clear. Section 19(1) of the Act is set out below:-

"19. Appeal. - (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was

prevented by sufficient cause from filing the appeal in time."

13. Considering that the first appeal was disposed on 14/01/2020, the present proceeding is barred by the law of limitation, under the provision of the RTI Act. An appeal or a complaint needs to be filed within 90 days from the date of the order of FAA.

There is no any application for condonation of delay. Having perused this, the FAA has neither produced the documents to show that the order of the FAA has been duly communicated to the Complainant, nor does the Complainant have enclosed the copy of the FAA's order. In fact the Complainant has contended that the FAA has not decided on the appeal.

14. It is a admitted fact that, Complainant was suspended in the month of November 2017 and therefore the stand taken by the PIO that, she rejected the request of Complainant since disciplinary inquiry is pending and is not inappropriate or illegal but squarely fall under exempted category as per sec 8(1)(h) of RTI Act.

Even though the PIO has replied within stipulated time that the information cannot be furnished since inquiry has not reached final conclusion, however, the applicant's right under Right to Information Act, 2005 cannot be taken away once the matter in the preliminary inquiry is decided for issuing charge memo.

15. During the course of hearing the FAA has produced a bunch of documents alongwith letter dated 29/07/2021 and submitting that all the information has been furnished to the Complainant through Inquiry Officer / Presenting Officer in the disciplinary proceeding.

As discussed earlier, the prayer of Complainant at (a) and (b) cannot be considered since the proceeding has been filed under section 18 of the Act. However, as per the submission made by the

rival parties, and documents on records, there have been errors committed by the FAA. FAA did not decide the matter within 30 days, not even 45 days, where the reasons for delay are required to be recorded.

Thereafter the FAA without passing a reasoned order on merit, dismissed the appeal for absence of the Complainant, which was against the provision of the Act and Rules framed thereunder. Commission expects that, FAA shall be diligent henceforth and deal with the first appeal with caution and with the spirit and intent of the Act.

16. The Complainant has not rebutted the contention of PIO and FAA by filing any rejoinder. In fact, fair opportunities have been granted to Complainant but she never appeared before this Commission. Adv. S. Talaulikar appeared on 19/03/2021 and again on 16/04/2021 and undertook to file her wakalatnama. However she failed and neglected to place on records her wakalatnama and therefore her appearance before the Commission cannot be treated as valid appearance. Complainant also failed to appear in all further hearings too i.e. 23/04/2021, 26/07/2021 and 13/08/2021.

In the aforesaid circumstances, I disposed the complaint with the following:

O R D E R

The complaint is dismissed.

Proceedings closed.

Pronounced in open court.

Notify the Parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner

