

## GOA STATE INFORMATION COMMISSION

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**Shri. Sanjay N. Dhavalikar**, State Information Commissioner

**Complaint No. 07/2021/SIC**

Shri. Shamsundar V. Kerkar,  
H. No. 1152, Bag-Wada,  
Morjim, Pernem-Goa 403512

..... Complainant

**v/s**

Shanti M. Poke,  
The Public Information Officer (PIO),  
Office of Deputy Collector and SDO,  
Pernem-Goa

..... Opponent

Filed on : 06/07/2021

Decided on : 21/01/2022

### **Relevant dates emerging from appeal:**

RTI application filed on	: 28/06/2021
PIO replied on	: Nil
First appeal filed on	: Nil
FAA order passed on	: Nil
Second appeal received on	: 06/07/2021

### **ORDER**

1. The brief facts of this complaint, as contended by the complainant are that vide application dated 28/06/2021 he sought some information under section 6(1) of the Right to Information Act, 2005 (for short, the Act) from opponent Public Information Officer (PIO). The complainant received copy of notice dated 30 /06/2021 issued by PIO under section 11 of the Act to Shri. Kashinath R. Kerkar. Further the complainant filed complaint under section 18(1) of the Act before the Commission, with several prayers, as mentioned in the complaint memo.

2. On going through the records, it is found that the complainant herein did not file first appeal before the First Appellate Authority. Rather the complainant did not even wait for the expiry of the stipulated period of 30 days, provided to the PIO to furnish the information, and filed this complaint giving no opportunity to PIO to furnish the information within the stipulated period.
3. On the backdrop of these facts it is necessary to consider the maintainability of such a complaint. When an applicant files request under section 6(1) of the Act for information, the PIO under section 7(1) is required to dispose the request within 30 days of the receipt of request. Section 19(1) provides for applicant to file appeal before the appellate authority against denial/deemed denial of the information. Also, section 19(5) provides an opportunity to the PIO to justify his action before the first appellate authority and section 19(6) mandates the appellate authority to decide the first appeal within 30 days of the receipt of the appeal or upto 45 days, for reasons to be recorded in writing. The fundamental functionality under the Act is to provide information and a citizen seeking information has been provided with procedure and remedies under this regime it is therefore only after exhausting these options provided under the Act, the applicant may prefer complaint under section 18(1) or appeal under section 19(3) before the Commission.
4. However in the present matter, the complainant has filed this complaint without availing the available remedy, therefore the question of maintainability of this complaint arises. This Commission has dealt with similar issue of maintainability of such complaints/appeals without first appeal. The full bench of the Commission vide order dated 27/05/2016 has held that the complaint under section 18 of the Act cannot be entertained unless

the complainant exhausts the remedy of first appeal under section 19(1) of the Act.

5. The present complaint also involves a similar issue, and therefore the Commission hold that the said complaint is not maintainable and needs to be closed. However the interest of the complainant is also required to be protected. Hence the Commission passes the following order.:

- (a) The Complaint is dismissed as closed.
- (b) The Complainant is granted liberty to file first appeal under section 19(1) of the Act in respect of the denial/deemed denial of information sought vide application dated 28/06/2021, within 15 days from the date of receipt of this order. The first appellate authority is directed to decide the first appeal, if filed by the applicant as mentioned above, on merit in accordance with law, without insisting of the period of limitation.
- (c) The right of complainant herein to file complaint or second appeal in case aggrieved by the order of the first appellate authority, within the period of limitations is kept open.

Proceeding stands closed.

Pronounced in the open court.

Notify the parties.

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

Aggrieved party if any, may move against this order by way of a Writ Petition, as no further Appeal is provided against this order under the Right to Information Act, 2005.

Sd/-

**(Sanjay N. Dhavalikar)**

State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa