

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 11/2021 /SIC

Mrs. Mafalda Menezes,
R/o. Rudra Complex, Bldg.-B/F1,
Behind Flower Cross,
Bambolim-Goa

....Complainant

V/s

The Public Information Officer (PIO),
The Secretary,
Village Panchayat Sao Matias,
Malar, Naroa, Vanxim,
Tiswadi-Goa

....Opponent

Filed on: 18/08/2021
Decided on: 24/06/2022

Relevant dates emerging from Complaint:

RTI application filed on	: 03/06/2021
PIO replied on	: 18/06/2021
First appeal filed on	: Nil
FAA order passed on	: Nil
Complaint received on	: 18/08/2021

ORDER

1. The brief facts of this complaint are that the complainant vide application dated 03/06/2021 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') requested for certain information from opponent Public Information Officer (PIO), Secretary, Village Panchayat Sao Matias. PIO vide reply dated 18/06/2021 informed the complainant that the information is 'Nil'. Being aggrieved by the said reply of the PIO, the complainant filed the present complaint against the PIO, before the Commission.

2. The concerned parties were notified and the matter was taken up on board. Pursuant to the notice, Adv. Siddhi Parodkar, Adv. Ketan Govekar and Advocate Anand Shirodkar appeared on behalf of the complainant, whereas, opponent PIO Shri. Jenu Naik remained present alongwith Advocate Shirin V. Naik, Advocate Shrushti S. Naik and Advocate Vallari Kudchadkar. PIO filed submission dated 11/11/2021 and 21/12/2021, additional submission from PIO was received on 28/04/2022. Complainant filed written arguments dated 16/02/2022 and additional submission dated 12/05/2022. Arguments were heard on 12/05/2022 wherein Advocate Siddhi Parodkar argued for the complainant, and Adv. Shirin V. Naik argued for the PIO.
3. On close scrutiny of the records, it is observed that the complainant is aggrieved by the reply dated 18/06/2021 issued by the PIO stating that the information is 'Nil'. It is the contention of the complainant that she had sought information from PIO regarding complaint dated 24/05/2021 filed by her in the office of the Village Panchayat Sao Matias, Malar. Complainant contended that the PIO has given false/misleading and incomplete information, hence she has filed the present complaint under section 18(1)(e) of the Act, praying for appropriate disciplinary action against the PIO.
4. While perusing the records of the present case it is found that the complainant herein had not filed the first appeal against the denial/deemed denial of the information by the PIO, as is required under section 19(1) of the Act. The complainant has approached the Commission under section 18(1)(e) of the Act seeking disciplinary action against the PIO, without seeking redressal under section 19(1) of the Act from the First Appellate Authority. Thus the legal issue of maintainability of such

complaint without first appeal arises here and the fundamental aspect the Commission needs to decide is the maintainability of the present complaint.

5. Section 18(1) of the Act opens up with the words, "Subject to the provision of this Act....." which implies that this section operates in consonance with and not in conflict with or independent of the rest of the provisions of the Act. Thus section 18, as per the Act cannot be said to be an independent section, but is subject to the provisions of this Act. It means section 18 does not enjoy an overriding status over other provisions, more particularly section 19 of the Act. Hence both these sections i.e. 18 and 19 are to be read together.
6. In a similar matter, in Complaint No. 171/SIC/2010 this Commission has held that the proper course of action for the complainant is to file first appeal under section 19(1) of the Act. The complainant therein had filed a complaint against the decision of PIO to reject the request for information by invoking exemption under section 8(1)(e) of the Act. The Commission vide order dated 24/06/2010 held that in the said situation the proper course of action would have been to file first appeal and adjudicate the propriety of refusal before the First Appellate Authority.
7. It is also observed that the full bench of this Commission vide order dated 27/05/2016 has held that the complaints 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.

8. Contrary to the ratio mentioned above, this commission, in another complaint filed by Mr. Rui Ferreira against Reserve Bank of India, directed the PIO to furnish the information sought, though the complainant therein had not filed the first appeal against the decision of the PIO. The Reserve Bank of India challenged this order before the Hon'ble High Court of Bombay at Goa bench (CRA No. 113 of 2004) (Reserve Bank of India V/s Rui Ferreira and others) (2012 (2) Bom.C.R. 784). The Hon'ble High Court has observed at Para 8:-

"8. Further, the question that arises is whether the Commission would have entertained a complaint from respondent no.1 directly under Section 18 when respondent no.1 had failed to file an appeal against the order of the PIO of the Co-operative Bank rejecting the request and against the order of the Reserve Bank of India, refusing the request on the ground that the information is protected by Section 8(1)(a) of the Act. Section 18 confers power on the State Information Commission to receive and inquire into a complaint from any person in the nature of supervisory in the circumstances referred to in that Section. Thus the State Information Commission may entertain a complaint from any person who has been unable to submit a request to the PIO because no such officer has been appointed or if the PIO has refused to accept his application for information or an appeal under the Act; or whether the person has been refused access to any information requested under the Act or whose request has not been responded within the time specified under the Act etc. The case of respondent no.1 does not fit into either of the circumstances referred to under Section

18(1)(a) to (f). The PIO of the Co-operative Bank and the RBI have rejected the request for information after considering the request in accordance with law. The Act provides for appeals against such orders vide Section 19."

9. In another case, while dealing with similar facts, the Hon'ble Supreme Court, in the case of Chief Information Commissioner and another V/s State of Manipur and another (Civil Appeal No. 10787-10788 of 2011) has held at para 35:-

" 35 Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act. It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876)1 Ch. D. 426] that where statute provides

for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden."

The rationale behind these observation of Apex court is contained in para 37 of the said Judgment.

"37. We are of the view that section 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies, one cannot be substitute for the other."

Para 42 of the Judgment (supra) observes:-

"42. Apart from that the procedure under Section 19 of the Act, when compared to Section 18, has several safeguards for protecting the interest of the person who has been refused the information he has sought. Section 19(5), in this connection, may be referred to. Section 19(5) puts the onus to justify the denial of request on the information officer. Therefore, it is for the officer to justify the denial. There is no such safeguard in Section 18. Apart from that the procedure under Section 19 is a time bound one but no limit is prescribed under Section 18. So out of the two procedures, between Section 18 and Section 19, the one under Section 19 is more beneficial to a person who has been denied access to information."

10. The above mentioned judgements on the issue of maintainability of the complaint filed under section 18 of the Act seeking action against PIO without filing first appeal under section 19(1) of the ACT are clear enough to give directions. The facts involved in the present case and those before the Hon'ble

High Court and Hon'ble Supreme Court are similar. Hence the issue of maintainability of such complaint is laid to rest.

11. Also, the remedy of filing first appeal would be in consonance with the provisions of section 19(5) of the Act and provide fair opportunity to the PIO to prove that the denial of information was justified. Seeking disciplinary action, by way of complaint without first appeal would be violative of these provisions.
12. In the background of the facts of the present proceeding as stated above, the Commission concludes that the present complaint filed against the PIO for initiating disciplinary action against him is not maintainable. Hence the Commission is unable to grant any relief to the complainant. However, considering that the present complaint has been proceeded before the Commission, the interest of the complainant is required to be protected.
13. In the light of above discussion, the present complaint stands closed. However, the complainant is granted liberty to file first appeal under section 19(1) of the Act before the First Appellate Authority, Block Development Officer, BDO Office, Panaji, Tiswadi Goa against furnishing of false/misleading/incomplete information, as contended by the complainant, which she had sought vide application dated 03/06/2021, within 30 days from the receipt of this order. If such an appeal is filed, the first appellate authority is directed to decide the same on merit in accordance with the law, without insisting on the period of limitation.

14. The right of complainant to file second appeal/complaint in case she is aggrieved by the order of the first appellate authority, 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