

GOA STATE INFORMATION COMMISSION

"Kamat Towers" 7th Floor, Patto Plaza, Panaji, Goa – 403 001

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 03/2021/SIC

Mr. Shrikant V. Gaonker,
Padmavati Towers, SF-5,
2nd Floor, 18th June Road,
Panaji- Goa.

..... Complainant

v/s

The Public Information Officer (PIO),
Office of the Assistant Registrar of
Co-operative Societies,
Central Zone , SahakarBhavan,
1st Floor, Opp. Municipal Market,
Panaji-Goa.

..... Opponent

Filed on : 25/02/2021

Decided on : 18/02/2022

Relevant dates emerging from appeal:

RTI application filed on	: 28/12/2020
PIO replied on	: 15/01/2021
First appeal filed on	: Nil
FAA order passed on	: Nil
Complaint received on	: 25/02/2021

ORDER

- 1) The brief facts of this complaint are that the complainant Shri. Shrikant V. Gaonker vide application dated 28/12/2020 sought certain 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 a reply dated 15/01/2021 from PIO asking the complainant to call on PIO's office to inspect the concerned records in order to verify the desired information, so as to enable the PIO to furnish the same.

- 2) It is the contention of the complainant that the information sought is clear and he never requested for inspection. Being aggrieved on the failure of the PIO to furnish information within 30 days, the Complainant filed complaint before the Commission with prayers such as information, compensation, penal action etc.
- 3) Pursuant to the notice, the complainant appeared before the Commission and filed rejoinders. Shri. Devdatta S. Naik, PIO and Smt. Smita M. Gavande, APIO also appeared; filed reply. During the proceeding, it is discovered that the complainant has filed the said complaint, however without filing first appeal under section 19(1) of the Act, against the deemed denial of the information. Complainant has approached the Commission under section 18 of the Act seeking information, compensation, penal action etc. Therefore the fundamental aspect needs to be decided is on the maintainability of this complaint.
- 4) Section 18 of the Act opens with the words, "Subject to the provisions 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 on overriding status over other provisions, more particularly section 19. Hence both these sections i.e. 18 and 19 are to be read together.
- 5) The Act is clear about the fact that the information seeker can approach the Commission under section 18 only after he exhaust the efficacious remedy of first appeal. An information seeker is free to approach the Commission by way of complaint under

section 18, if his grievance is not redressed even after the order of the first appellate authority. As mentioned above, section 18 is subject to the provisions of section 19 and section 19 provides for an efficacious remedy to the requirement of information under the Act.

- 6) Also, 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.
- 7) 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."

- 8) The above mentioned judgement on the issue of maintainability of the complaint filed under section 18 of the Act seeking information, compensation and penal action without filing first appeal under section 19(1) of the Act is clear enough to give directions. Hence the issue of maintainability of such complaint is laid to rest.
- 9) On this background the Commission concludes that the present complaint filed against the PIO for deemed denial of information is

not maintainable. Hence the Commission is unable to grant any relief to the complainant.

- 10) 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, against deemed denial of the information sought by him vide application dated 28/12/2020, within 20 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.
- 11) The right of complainant to file second appeal/complaint in case the complainant is aggrieved by the order of the 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