

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

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Appeal No. 289/2022/SCIC

Shri. Mahesh Kamat,
"Blossom", Flat 101,
Seasons Co-operative Housing Society,
Murida, Fatorda,
Marga-Goa 403602.

.....Appellant

V/S

Derrick Pereira Neto,
First Appellate Authority,
Kadamba Transport Corporation Ltd.,
Parasio De Goa Building,
Porvorim-Goa.

.....Respondent

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 14/11/2022

Decided on: 02/08/2023

ORDER

1. The Appellant, Shri. Mahesh Kamat, r/o. "Blossom" Flat 101, Seasons Co-operative Housing Society, Murida, Fatorda, Marga-Goa vide his application dated 25/07/2022 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Kadamba Transport Corporation Ltd., Porvorim-Goa.
2. The said application was responded by the PIO on 24/08/2022 in the following manner:-

"With reference to your application cited above, reply is furnished as under:-

- *.Information sought in above application forms the part of the appeal which is decided and dismissed by the competent Authority and hence cannot be furnished. No information is available with KTCL for Sr. No. 1, 2 and 3.*

- *Regarding point at Sr.No. 4, you may refer the reply given in past.*
- *No correspondence with PIO KTCL will be entertained in this regards in future as you are wasting time of KTCL office due to your cantankerous nature.”*

3. Not satisfied with the reply of the PIO, the Appellant preferred first appeal before the Managing Director, Kadamba Transport Corporation Ltd., Porvorim-Goa on 15/09/2022 being the First Appellate Authority (FAA).
4. The FAA vide its order dismissed the first appeal on 27/10/2022.
5. Being aggrieved and dissatisfied with the order of the FAA dated 27/10/2022, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act.
6. Notices were issued to the parties, pursuant to which the Appellant appeared in person on 03/01/2023, the representative of the FAA, Hitendra Satarkar appeared and placed on record the reply of the FAA on 03/01/2023.
7. Perused the pleadings, reply and considered the documents available on records.
8. By this second appeal filed under Section 19(3) of the Act, the Appellant assails the order dated 27/10/2022 passed by the First Appellate Authority, with the prayer to remand back the matter to the FAA for reconsideration.
9. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. It is a right of entering a superior forum for invoking its aid. A second appeal is provided under Sub-Section(3) of Section 19 of the Act and procedure for hearing the appeals has been framed under Section 19(10) of the Act, which reads as under:-

"19(10) The Central Information Commission or State Public Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed."

10. Section 2(g) of the Act, defines the term "Prescribed" in the following way:-

*"2. **Definitions.** – In this Act, unless the context otherwise requires, --*

(g) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;"

11. In exercise of power conferred by Section 27 of the Right to Information Act, 2005, the Government of Goa made rules thereunder called the Goa State Information Commission (Appeal Procedure) Rules, 2006. Rule No. 3 of the said rules read as under:-

***"3.Contents of appeal.**___ An appeal to the Commission shall contain the following information, namely:___*

(i) name and address of the appellant;

(ii) name and address of the State Public information Officer against whose decision the appeal is preferred;

(iii) particulars of the order including number, if any, against which the appeal is preferred;

(iv) brief facts leading to the appeal;

(v) if the appeal is preferred against deemed refusal, the particulars of the application, including number and date as also the name and

address of the State Public information Officer to whom the application was made;

(vi)prayer or relief sought;

(vii)grounds for the prayer or relief;

(viii)verification by the appellant; and

(ix)any other information which the commission may deem necessary for deciding the appeal.”

From the bare reading of the above provisions of law it would clear that to file the appeal under Section 19(3) the above rule provides a complete statutory mechanism.

12. At this stage it would be appropriate to cite the judgement of Hon'ble Delhi High Court in the case **Delhi Development Authority v/s Central Information Commission & Anrs. (W.P. No. (c) 12714/09)** has held as under:-

"36. We would also like to re-iterate the provisions of Section 19(10) of the RTI Act. Section 19, as we have mentioned earlier, deals with appeals. Sub-section (10) of Section 19 clearly stipulates that the Central Information Commission or the State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure "as may be prescribed". The word "prescribed" is defined in Section 2(g) of the RTI Act to mean prescribed by the rules made under the RTI Act by the appropriate Government or the competent authority, as the case may be. It has no reference to any regulations made or to be

made by the Chief Information Commissioner. Thus, the mandate of the Act is that the Central Information Commission shall decide the appeal in accordance with the rules made under the said Act by the appropriate Government or the competent authority, as the case may be and not otherwise. "

13. The Hon'ble Supreme Court in the case **Chief Information Commissioner & Anrs. v/s State Of Manipur & Anrs. ((2011) 15 SCC)** has observed as under:-

"40. It is well known that 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 the 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 that where a 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. "

14. The PIO is a designated person and representative of the department or organisation who is responsible to ensure compliance with the RTI Act. He plays a pivotal role in not only making information available to information seeker but also discharging many other auxiliary responsibilities. The Act has conferred the duty to ensure compliance on the PIO. The statutory provision as contained in Section 20 of the Act, provide for imposition of penalties on the PIO. The aforesaid statutory provision does not provide for imposition of any penalty upon the FAA. There is also no provision under the Act to issue any direction

to the FAA to provide the information, therefore the PIO needs to be a party in the second appeal.

15. The Hon'ble High Court of Bombay at Goa in the case **Public Information Officer, Joint Secretary to the Governor & Anrs. v/s Shri. Manohar Parrikar & Anrs. ((2012) 1 Bom CR 558)** has observed that :-

"Section 19 of the RTI Act provides that any person who does not receive a decision within the specified time or is aggrieved by the decision of a Central Public Information Officer or the State Public Information Officer, may within 30 days file an appeal to the specified appellate authority. The first appeal under Section 19 of the RTI Act is contemplated only by or at the instance of the person whose application for an information has not been decided or rejected by the PIO. Subsection (5) of Section 19 provides that in any appeal proceedings, the onus to prove that the denial of the request was justified shall be on the PIO who has denied the request. The PIO who passes the initial order refusing the request for an information is required to defend his action before the appellate authority and the burden of proving that the denial was justified is on him. Thus, the PIO is not merely an authority which initially decides upon the request of an applicant, but in effect is a party to the appeal filed before the appellate authority. The PIO acts as a medium for dissemination of an information by the "public authority" under the RTI Act. If he holds that the public authority is not required to disclose the information, he is required to defend his decision. The PIO can be subjected to a penalty under Section 20 of

the RTI Act for non-disclosure of the information. The proviso to Section 20 provides that the PIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him. Thus, the PIO is, in effect, a party litigant in an appeal or a second appeal which is filed before the first appellate authority or the Information Commission and in certain circumstances is also personally liable to a penalty.”

16. In the present case, the Appellant did not join the PIO as a party in this second appeal. The present appeal is filed against the FAA only, which is contrary to the procedure laid down under Rule 3 of the Goa State Information Commission (Appeal Procedure) Rules, 2006. Besides that under Section 19(5) of the Act provides that, in any appeal proceeding, the onus to prove that the denial of the request was justified shall be on the PIO who has denied the request. Moreover, the enforcement of any order even passed by this Commission would be rendered impossible in the absence of the PIO and such an order without hearing the PIO, who is a necessary party, would be bad in law.

17. Considering the above, there is no scope for filing second appeal without joining the PIO as a party. Therefore, I am of the considered opinion that, appeal is not maintainable, hence dismissed.

- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner