

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

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Complaint No. 43/2022/SCIC

Shri. Shashikant Anant Sinai Karapurkar,
R/o. H.No. 123/1, Sonarbhat,
Swami Samarth Housing Co-op Society,
Behind Canara Bank, Betim, Branch,
Betim, Bardez-Goa 403101.

.....Complainant

V/S

The Public Information Officer,
Office of the Block Development Officer-I,
Bardez Block,
Mapusa Govt. Complex Building,
Mapusa-Bardez-Goa 403507

.....Opponent

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 16/12/2022

Decided on: 21/07/2023

ORDER

1. The Complainant, Shri. Shashikant Anant Sinai Karapurkar, r/o. H.No. 123/1, Sonarbhat, Swami Samarth Housing Co-op Society, Behind Canara Bank, Betim Branch, Betim, Bardez-Goa vide his application dated 22/09/2022 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), Office of Block Development Officer, Bardez Block, Mapusa-Goa.
2. The said application was responded by the PIO on 18/10/2022 in the following manner:-

"With reference to your RTI application dated 22/9/2022 received by this office on 26/09/2022, it is to inform you that the information referred by you does not fall within the purview of definition of "information" as given in Section 2(f) of the Right to Information Act, 2005 since the application contains "questions". Hence application is rejected. "

3. Not satisfied with the reply of the PIO, the Complainant landed before the Commission by this complaint under Section 18(1) of the Act.
4. Notices were issued to the parties, pursuant to which the Complainant appeared in person on 25/01/2023, the representative of the PIO, Shri. Umesh Shetgaonkar appeared and placed on record the reply of the PIO dated 25/01/2023.
5. Considering that the Complainant is a senior citizen of 82 years old and in view of nature of information i.e. his own information with regards to Revision of Pension the Commission at the outset without going to the merits of the case, directed the PIO to furnish the available information to the Complainant. Accordingly on 27/04/2023, the representative of the PIO, Shri. Umesh Shetgaonkar appeared and furnished bunch of documents to the Complainant and submitted that he has furnished all the available information to the Complainant. However, the Complainant is not satisfied with the information provided by the PIO, hence the matter proceeds for adjudication.
6. Perused the pleadings, reply, scrutinised the documents and heard the submissions of the rival parties.
7. The PIO through his reply dated 25/01/2023 contended that, the present complaint proceeding is not maintainable as no first appeal is filed under Section 19(1) of the Act, which is a mandatory procedure required in order to prefer a second appeal or complaint.
8. Having perused the records it is seen that, the Complainant without exhausting the remedy available under Section 19(1) of the Act, preferred this present complaint proceeding.
9. The Hon'ble High Court of Karnataka in the case **M/s Bangalore Electricity Supply Company Ltd. & Anr. v/s the State**

Information Commissioner & Anrs. (W.P. No. 19441/2012)

has held as under:-

"21. The procedure adopted by the first respondent is clearly not permissible in law. If the second respondent is aggrieved by the orders passed by the Public Information Officer under section 7 of the Act, he has to file an appeal under section 19(1) of the Act before the appellate authority and in case he is aggrieved by the action or inaction of the appellate authority, he has to file a second appeal under section 19(3). Filing of an application under section 18(1) of the Act complaining the alleged inaction of the Public Information Officer is clearly not permissible in law."

10. The Hon'ble High Court of Bombay at Goa in the case **Goa Cricket Association & Anrs. v/s State of Goa & Ors. (Writ Petition No. 739/2010)** as observed as under:-

"7....Section 18 of the Act confers jurisdiction on the State Information Commission to entertain the complaint in cases which do not include the case of refusal by the public authority to disclose the information. The remedy available to the complainant, in such a case, therefore, is by way of First Appeal before the First Appellate Authority."

11. The Hon'ble Supreme Court while dealing with similar facts in the case **Chief Information Commissioner & Anrs. v/s State of Manipur & Another (2012 (1) ALL MR 948 (SC))** has observed at para No. 35 as under:-

"35..... 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. ”

12. As a larger intricate legal issue of maintainability of such complaints without first appeal, was involved in several matters, this commission felt it necessary to constitute full bench of the commission to hear such issue. Accordingly Chief Information Commissioner constituted full bench of the commission comprising of Chief Information Commissioner and both State Information Commissioners. All the complaints were heard in a common hearing on 20/04/2016. By order dated 27/05/2016 passed by the full bench of this Commission, it is held that the complaints u/s 18 of the RTI Act cannot be entertained unless the Complainant exhausts his remedy of first appeal u/s 19(1) of the Act seeking enforcement of his fundamental claim of seeking information. Hence above complaint proceeding is not maintainable.

13. However, parting with the matter, the Commission is of the opinion that, the approach of the then PIO Shri. Shivprasad Naik appears to be very casual and trivial in dealing with the RTI matters. The PIO had erred in holding that merely because information was sought through questions form, same is not coming within the purview of the RTI Act. The Act nowhere states that if a question is framed in the RTI application it would not be replied. One must not lose sight of the fact that the primary object of the Act is to disclose the information available in records. Therefore, it is important that PIO needs to apply his mind very carefully and see whether the information is available/eligible or not. The above reply of the PIO is without any legal backing and against the letter and spirit of the Act.

14. In the aforesaid observations and circumstances, the complaint is dismissed as not maintainable.

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner