

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 01/2023/SIC

Mr. Keshav A. Kalangutkar,
H. No. 10/80/C, Anandiniwas ,
Telang Nagar, Khorlim,
Mapusa Goa 403110.

-----Complainant

v/s

The Public Information Officer,
Mapusa Municipal Council,
Near Court Junction,
Altinho, Mapusa, Bardez Taluka,
Goa 403507.

-----Opponent

Relevant dates emerging from the proceeding:

RTI application filed on	: 16/06/2022
PIO replied on	: Nil
First appeal filed on	: Nil
First Appellate authority order passed on	: Nil
Complaint received on	: 12/01/2023
Decided on	: 24/04/2023

ORDER

1. The brief facts of this complaint are that the complainant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') had sought for certain information, however, received no reply within the stipulated period from Opponent Public Information Officer (PIO). Being aggrieved by deemed denial of the information, complainant filed the present complaint against the PIO, which came before the Commission on 12/01/2023.
2. The concerned parties were notified and the matter was taken up for hearing. Pursuant to the notice, Advocate Arjun F. Naik appeared on behalf of the complainant and prayed for the information sought vide application dated 16/06/2022 and penal action against the PIO for not furnishing the information. Shri. Rajendra Bagkar, PIO appeared in person and undertook to file reply.
3. While perusing the records of the present case it is found that the complainant had sought for certain information, the said application was not replied by the PIO, which under Section 7 (2) of the Act amounts to deemed refusal of the request. The complainant herein has approached the Commission under Section 18 of the Act seeking information and penal action under Section 20 of the Act 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.

4. 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.
5. 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. 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.
6. 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.
7. 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 Sections 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 a 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 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 Hon'ble Supreme Court are similar. Hence the issue of maintainability of such complaint is laid to rest.
9. 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.

10. 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.
11. In the light of above discussion, the present complaint is disposed with the following order:-
 - a) Complainant is granted liberty to file first appeal under Section 19 (1) of the Act before the First Appellate Authority, Chief Officer, Mapusa Municipal Council, Mapusa, Bardez-Goa against the deemed refusal of the information sought vide application dated 16/06/2022, within 20 days from the receipt of this order.
 - b) If such an appeal is filed, the first appellate authority is directed to decide the same on merit in accordance with law, without insisting on the period of limitation.
 - c) The right of complainant to file second appeal/ complaint in case the complainant 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.

