

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 01/2024/SIC

Sharlet Fernandes,
Francisco Costa Ward, 317,
Utorda-Majorda,
Salcette-Goa 403713.

-----Complainant

v/s

Mr. Custodio Faria,
The Public Information Officer,
The Secretary,
Village Panchayat Majorda-Utorda-Calata,
Majorda, Salcette-Goa.

-----Opponent

Relevant dates emerging from appeal:

RTI application filed on	: 07/10/2023
PIO replied on	: 01/11/2023, 16/11/2023
First appeal filed on	: Nil
First Appellate Authority order passed on	: Nil
Complaint received on	: 10/01/2024
Decided on	: 22/02/2024

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 certain information, however, received no information within the stipulated period, from opponent Public Information Officer (PIO). It is the contention of the complainant that the PIO has arrogantly denied the information. Being aggrieved, the complainant under Section 18 of the Act, has filed the present complaint against the PIO.
2. The concerned parties were notified, pursuant to which complainant appeared on 22/02/2024, praying for appropriate directions to the PIO and action against the PIO.
3. While perusing the records of the present matter, it is found that, the complainant had sought certain information and also inspection of relevant documents. PIO issued reply dated 01/11/2023 and 16/11/2023, requesting the complainant to visit his office for inspection. The complainant in response visited PIO's office only to find that the PIO was not present on the day of inspection i.e. 06/11/2023 and 28/11/2023. The aggrieved complainant has approached the Commission under Section 18 of the Act seeking

appropriate directions to the PIO 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 herein 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 over 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 had held that the proper course of action for the complainant is to first file appeal under Section 19 (1) of the Act. The complainant therein had filed a complaint against the decision of PIO rejecting 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 to exhaust adjudication of 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 had 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 the 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 judgement 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, is clear enough to give directions. The facts involved in the present case and those before the Hon'ble Supreme Court being similar, 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 provides fair opportunity to the PIO to prove that the denial of information was

justified. Seeking penal and 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 matter as stated above, the Commission concludes that, the present complaint filed against the PIO is not maintainable. Hence, the Commission is unable to grant any relief to the complainant. However, considering the beneficial provisions and objectives of the Act, the Commission is of the opinion that the interest of the complainant needs 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, Block Development Officer (BDO), Salcete, Margao-Goa, against the deemed refusal of the information sought vide application dated 07/10/2023, within 10 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.

