

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri. M. S. Keny, State Chief Information Commissioner

**Review Application No.2/2012
In
Comp. No.106/SCIC/2011**

Shri Judas J. F. X. Fernandes,
R/o.H. No.168, Kevona,
Rivona, Sanguem-Goa

... Complainant

V/s.

The Public Information Officer,
Kadamba Transport Corp. Ltd.
Alto Porvorim,
Bardez – Goa

... Opponent

Complainant present.

Opponent absent

Adv. P. Agrawal for opponent present.

ORDER
(07/05/2012)

1. The Complainant, Shri Judas J. F. X. Fernandes has filed the present application praying that the order dated 16/02/2012 passed by this Commission in the above complaint be reviewed and the complaint of the complainant be allowed..

2. It is the case of the complainant that the complainant has filed present complaint before this authority stating that inspite of the order dated 6/4/2011 passed by the First Appellate Authority(F.A.A.), the Public Information Officer (P.I.O.)/opponent had not furnished the information. That the complainant in the above case on 6/12/2011 filed his written submission in which it is clearly stated that inspite of the order of the F.A.A., the opponent has not furnished the information. That the complainant did not canvas any oral submission in the above complaint stating that the

P.I.O. has furnished the information. Moreover when the written submissions are on record, the question of arguing orally does not arise. It is also not the case of the opponent that they have complied with the order of the F.A.A. However in order dated 16/2/2012 passed in the above complaint in para 6 of the said order it is recorded that ***“During the course of arguments, the complainants state that the information has been furnished and that he has no grievance of any sort.”*** And that accordingly the complaint was dismissed. Hence the present application.

3. The opponent/P.I.O. has filed the reply which is on record. It is the case of the opponent that the review application is false, misconceived and bad in law. That the complainant has preferred this present review application against the order dated 16/2/2012 and that the same is not maintainable at law and/or on facts as there is no provision under the R.T.I. Act by which the decision or on order pronounced by the Commission can be reviewed. That by Section 19(7) of the R.T.I. Act, a decision passed by the Commission shall be binding therefore it puts a bar on review over its own decision which order once passed. By Sec.23 of the R.T.I. Act “No Court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of appeal in this Act”. Hence Sec.23 clearly puts a bar on all Courts to entertain any suit, application or other proceeding in respect of any order made under this aspect which also includes bar on reviews over its own decision which order once passed by the Commission. On merits, it is the case of the opponent that review of an order/judgement would lie where some new and important evidence has come to light which parties couldn't procure earlier or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. That the order sought to be reviewed does not disclose any error on the face of its record. That the review which is actually an appeal under the garb of a review is not maintainable more so when it amounts to reopening

and re-appreciation of entire evidence. A review application has to be differentiated from an appeal. That this Commission while delivering the order had taken all relevant facts into account and contention of the parties, written as well as oral before arriving at a decision. That the complaint was disposed of on specific contention of the complainant that he has no grievance of any sort as the information was furnished to him. That the application has not been verified and no affidavit is filed in support of the application and that in absence of any such affidavit along with the application of review requires to be dismissed. According to the opponent, the application is liable to be dismissed.

4. Heard both sides.

I have carefully gone through the records of the case and also considered the pleadings of the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

The present application is for review of the order passed by this Commission on 16/2/2012 disposing the complaint.

First of all it is to be seen whether the review is maintainable. The R.T.I. Act has not specifically conferred any power to the State Information Commission to review its own decision/order. This Commission has held in some cases that the Commission has no power to review its own decision. I have perused some of the rulings of the Central Information Commission on this point.

- (i) In one case (CIC/AD/A/2009/000446 dated 25/5/2010) it was held that the power of reviewing its own decision does not lie with the Commission and, therefore, the Commission has neither exceeded nor failed to exercise jurisdiction lawfully vested in it while dismissing the instant application.

(ii). In Mani Ram Sharma V/s Central Information Commission (Appeal No.CIC/WB/A/2009/00016 dated 4/2/2009 decided on 15/4/2009) it is observed as under:-

“ Any decision of this Commission is expected to be a speaking order. Although there cannot be an appeal against the order of the Commission, whose orders in appeal “shall be binding” U/s.19 Sub-Sec(7). It is open to appellant to move a Writ Petition challenging an order of a Commissioner should he find the order defective in law. C.P.I.O., C.I.C. has provided the information held by the Commission. But what **appellant Shri Sharma is seeking is a review of the orders of the Commission. The Right to Information Act cannot be sought to be used to circumvent the procedure of the law. Moreover under Right to Information Act, the Chief Information Commissioner has no authority to review a decision of the Commission.....”**

It is pertinent to note that the Hon'ble Supreme Court in Patel Narshi Thakershi & Ors. V/s. Shri Pradruman Singhji Arjuni Singhji AIR 1970 SC 1273 observed :-

“It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government has no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored.”

5. Apart from all this, the error must be error of inadvertence.

6. In view of all the above, I am of the opinion that no review lies. Hence, I pass the following order :-

ORDER

Application dated 19/03/2012 to review the order dated 16/02/2012 in Complaint No.106/SCIC/2011 is dismissed.

The application is accordingly disposed off.

Pronounced in the Commission on this 7th day of May, 2012.

Sd/-
(M. S. Keny)
State Chief Information Commissioner

