

4. Heard the learned Adv. Ms. V. Kubal for Complainant and Shri D. Chaudiker, representative of the Opponent on the aspect of maintainability of the Complaint.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the Complaint is maintainable?

It is seen that by application dated 24.10.2011 the Complainant sought certain information. By reply dated 16.11.2011 the Complainant was called to collect the information and as regards point No. 2 to 5 it was informed that information was not available. Being not satisfied with the information the Complainant has filed the present Complaint.

6. Now it is to be seen whether the Complaint is maintainable.

Under section 18(1) of the R.T.I. Act the Complaint may be filed if:-

- (a) the Complainant is unable to submit an application for information because no Public Information Officer has been designated by the Public Authority and the Public Information Officer or Assistant Public Information Officer refuses to accept the application for information;
- (b) the Complainant has been refused access to any information requested under the Act;
- (c) the Complainant does not receive a response from the Public Information Officer within the specified time limit;
- (d) the Complainant has been required to pay an amount of fee of which is unreasonable; and
- (e) the Complainant believes that he has been given incomplete, misleading or false information; and
- (f) in respect of any other matter relating requesting or obtaining access to the record under the Act.

Thus Complaint can also be filed in case the Public Information Officer does not respond within the time limit specified under the Act.

I have perused some of the rulings of Central Information Commission on the point.

(i) In a case [Appeal No. ICPB/A-16/CIC/2006 dated 13.04.2006] it was held that since the Appellant has not preferred any appeal before First Appellate Authority on the decision of the C.P.I.O. after he received the same, he should do so at the first instance before approaching this Commission.

(ii) In *Virendra Kumar Gupta v/s. Delhi Transport Corporation* (F. No. CIC/AT/C/2007/100372, dated 22.02.2008) it was observed as under:-

“Although Section 18 of the R.T.I. Act accords to a petitioner the right to approach the Commission directly in a Complaint, it would be wholly inappropriate to take up such matters as Complaints when the substance of the petition is about the quality and the extent of the information furnished. Such matters are appropriately the subject matter of the first appeal under section 19(1) and should be first taken up with the First Appellate Authority before being brought to the Commission either as Second Appeal or as Complaint or both.

The initial few words of section 18 are significant. These read as “Subject to the provisions of this Act” Constructively interpreted, these would imply that section 18 should be invoked provided other provisions of this Act, relevant to the subject of the petition, have been earlier invoked, or if there are grounds to hold that the petitioner was prevented from invoking those provisions to seek appropriate relief. That is to say, where the avenue of first appeal under section 19(1) is available to a petitioner, he should not be encouraged to skip that level and reach the Commission in complaint under section 18, especially when the relief sought by him could be best provided through the Appellate process. Section 18 cannot be allowed to be used as a substitute for section 19 of the Act.

In consideration of the above, petitioner is directed to file his first appeal before the Appellate Authority and should he still be dissatisfied with the orders of the Appellate Authority he may approach the Commission in Second Appeal/Complaint.”

(iii) In Writ Petition No. 132 of 2011 with Writ Petition No. 307 of 2011, Reserve Bank of India V/s. Rui Ferreira & Others, the Hon'ble High Court of Judicature at Bombay Goa Bench also held that it is not the intention of Parliament to permit parties who seek information to bypass the appeals provided by the Act. It was also observed that it was not permissible for the State Information Commission to entertain the complaint made by Respondent No. 1 under Section 18 of the Act.

(iv) In Chief Information Commissioner & Another v/s. State of Manipur & Anr. (Civil Appeal No. 10787-10788 of 2011 dated 12.12.2011) the Hon'ble Supreme Court has observed that Appeal under Section 19 is to be preferred instead of Complaint under Section 18.

7. In my opinion the Complainant ought to have filed the First Appeal before the First Appellate Authority.

The Complaint is filed in time. Therefore I intend to transfer the present Complaint to First Appellate Authority and the First Appellate Authority to deal with the same in accordance with law. It is open to the Complainant, if he wishes to file the Appeal Memo afresh. In case he files the same afresh delay be considered as complaint was filed in time.

8. In view of all the above, I pass the following Order:-

ORDER

The Complaint is transferred to the First Appellate Authority i.e. Director of Education, Directorate of Education, Porvorim-Goa. The First Appellate Authority to treat the same as Appeal and dispose the same strictly in accordance with law. The Complaint is disposed off.

The Complaint is according, disposed off.

Pronounced in the Commission on this 23rd day of April, 2012.

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

