

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

**Complaint No. 69/SCIC/2012**

Dr. (Ms.) Kalpana V. Kamat,  
Caldeira Arcade, 1<sup>st</sup> Floor,  
Bhute Bhat, Mesta VAddo,  
Vasco, Goa – 403 802 .... Complainant.

V/s.

Public Information Officer,  
Goa Public Service Commission,  
EDc House, Block 'C', 1<sup>st</sup> Floor,  
Dada Vaidya Road,  
Panaji – Goa .... Opponent.

**Complainant in person.**

**Opponent alongwith Adv. H. D. Naik.**

**ORDER**  
**(08.06.2012)**

1. The Complainant, Kum. Dr. Kalpana V. Kamat, has filed the present Complaint praying that information be furnished as requested by her without reserving any information to save any person; that the information be furnished without charging any fees under Section 7(6) of the R.T.I. Act and that penalty be imposed on the P.I.O. in terms of Section 20 of the R.T.I. Act.

2. In short it is the case of the Complainant that the Complainant vide application dated 02.03.2012 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer(P.I.O.)/Opponent. That by reply dated 19.03.2012 the Complainant was told to deposit an amount of Rs.52/- which the Complainant deposited. That the information received was misleading and incomplete. That the reasons given for refusing to supply information on point 4, 5, and 6 are merely a pretext to deny the information to the Complainant which she otherwise is entitled. Being aggrieved the Complainant has preferred the present Complaint on various grounds as set out in the complaint.

In pursuance of the notice the Opponent/P.I.O. appeared alongwith her Adv. Shri H. D. Naik.

3. The learned Adv. Shri H. D. Naik submitted that the Complaint is not maintainable. Since the matter is of maintainability of Complaint it was decided to take this issue first.

4. Heard the Complainant as well as Opponent and perused the records.

It is seen that vide application dated 02.03.2012 the Complainant sought certain information. The information consists of 7 items i.e. Sr. No. 1 to 7. By reply dated 19.03.2012 the Complainant was requested to pay Rs.52/- for furnishing the relevant information and by reply dated 26.03.2012 the information was furnished. Since some information was not furnished the Complainant preferred the present Complaint. The short point that falls for consideration is whether the Complaint is maintainable without preferring Appeal before F.A.A.

It is to be noted here that under Section 18(1) of the RTI 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.

In the case before me the reply is given though information is not furnished in view of Section 8(j) of the RTI Act.

I have perused some of the rulings of Central Information Commission as well as Hon'ble High Court and Supreme Court on the point.

(i) In a case (Appeal No. ICPBA/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 the remedy for such a person who has been refused the information is provided under Section 19 of the Act. It was observed as under:-

“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.....”.

In any case in view of the above, the remedy lies of First Appeal.

In view of all the above, I am of the opinion that the Complainant should file the Appeal before the F.A.A. i.e. Secretary, Goa Public Service Commission and the F.A.A. to dispose the same in accordance with law. The Appellant to file the appeal within ten days from the date of receipt of this Order. Since Complaint is filed in time the question of delay should be considered favourably. In case the Complainant is aggrieved by the Order of the F.A.A. she can certainly prefer Second Appeal/Complaint. Hence, I pass the following Order:-

### **ORDER**

The Complainant is directed to file the Appeal before the First Appellate Authority i.e. Secretary, Goa Public Service Commission, within ten (10) days from the receipt of this Order.

The First Appellate Authority to hear the same after giving opportunity to the parties and dispose the same strictly in accordance with law. The Complaint is disposed off.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 08<sup>th</sup> day of June, 2012.

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

