

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 49 OF 2008**

1. Mormugao Municipal Council  
A Municipal Council established and incorporated  
Under the Goa Municipalities Act, 1968,  
Mormugao, Goa,  
and through its Chief Officer.
2. Public Information Officer,  
Chief Officer Mormugao Municipal Council,  
Mormugao, Goa. .... Petitioners

***V e r s u s***

1. Smt. Elvira Fernandes,  
Bobby Bar, Gurudwara Road,  
Mangoor Hill,  
Vasco Goa.
2. Goa Information Commission Constituted  
under the provisions of  
The Right to Information Act, 2005,  
Having office at Ground floor,  
Shrama Shakti Bhavan,  
Patto Plaza, Panaji,. Goa. .... Respondents

Mr. S. D. Padiyar, Advocate for the Petitioner.

**Coram :- F. M. REIS, J**

**Date : 4<sup>th</sup> December, 2012.**

**ORAL JUDGMENT**

Heard Shri S. D. Padiyar, learned Counsel appearing for the  
Petitioner. None for the Respondents, though served.

2. The above Petition challenges the direction passed by the

Respondent no.2 by Order dated 13.12.2007, whereby the Petitioner has been, inter alia, directed to take a decision on merits on the various complaints made by the Complainant and communicate the decisions within a period of 30 days from the date of the said Order.

3. Shri S. D. Padiyar, learned Counsel appearing for the Petitioner, has assailed the impugned Order essentially on the ground that once the Respondent no.2 has come to the conclusion that the Respondent no. 1 has not been denied of any information, the question of invoking any powers under Section 4(1)(d) read with Section 19(8) of the Right to Information Act, would not arise. Learned Counsel further pointed out that the powers conferred on the Information Commission in terms of Section 19(8) of the Right to Information Act is in the course of deciding the Appeal and, admittedly, no Appeal was preferred before the Information Commissioner to invoke such powers. Learned Counsel further pointed out that the provisions of Section 4(1)(d) read with Section 19(8) of the Right to Information Act, was also not applicable to the facts of the present case as such aspects cannot be dealt with in exercise of powers under Section 19(8) of the Right to Information Act. Learned Counsel further pointed out that the Information Commissioner at the most could have considered the complaint filed under Section 18 of the Right to Information Act and considering the view taken by the Respondent no.2 in the impugned Order that there was no grievance raised by the Respondent no.1 of any denial of information, the question of passing such Order would not arise. Learned Counsel also pointed out that the Respondent no.2 has erroneously passed the impugned Order.

4. The Respondents, though served, failed to remain present.

5. I have duly considered the submissions of the learned Counsel appearing for the Petitioner. On perusal of the impugned Order, I find that the Respondent no.2 has not even considered what is the nature of the information nor the grievance of the Respondent no.1 to direct the Petitioners to act upon such complaints. In any event, the powers under Section 19(8) of the Right to Information Act are to be invoked by the Respondent no.2 only in exercise of powers in an Appeal preferred by the aggrieved person. In the present case, admittedly, no such Appeal was preferred by the Respondent no.1. Hence, Respondent no.2 has acted in material irregularity whilst passing the impugned Order while passing such directions without there being any Appeal preferred by the Respondent no.1 in terms of Section 19(8) of the Right to Information Act. Apart from that, the Respondent no.2 has also given a finding that the Respondent no.1 has not approached the Respondent no.2 with any grievance of denial of any information. Shri Padiyar, learned Counsel appearing for the Petitioners, in fact pointed out that in the complaint which is dated 13.09.2007, the Respondent no.1 was seeking permission for the purpose of carrying out repairs to his old house. In any event, such aspects cannot be considered in exercise of powers by the Respondent no.2.

6. Considering the facts and circumstances of the case, I find that the Respondent no.2 was not justified to pass the directions and the question of

invoking powers under Section 19(8) of the Right to Information Act would not arise at all in the present case.

7. Hence, the Petition succeeds. Rule is made absolute in terms of prayer clause (a). Petition stands disposed of.

**F .M. REIS, J.**

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