

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No.162/SIC/2010

Shri Joao C. Pereira,
R/o Acsona, Utorda,
Majorda, Salcete-Goa. Appellant.
V/s

- 1) The Public Information Officer,
Superintendent of Police (HQ),
Panaji –Goa.
- 2) The First Appellate Authority
Inspector General of Police,
Panaji –Goa. Respondent

CORAM

Shri Prashant S.P. Tendolkar, State Chief Information Commissioner,
Smt. Pratima K. Vernekar, State Information Commissioner

Appeal filed on 21/06/2010
Decided on: 29/06/2016

1) Facts:

The appellant by his application dated 13/3/2010 sought certain information from the respondent NO. 1 to his queries at (a) and (b) therein.

b) The PIO by his letter dated 10/4/2010 replied to the appellant that the information sought by him does not come under preview of RTI Act 2005.

c) Aggrieved by the said order of PIO, the appellant filed an appeal to the First Appellate Authority (F.A.A) i.e. the Respondent No.2 herein.

d) It is the case of the appellant that the said appeal was not heard by the Respondent No.2 within a period of 30 days nor he heard anything about it. It is his further case that suddenly on 6/06/2010, a Constable of Verna Police tendered to him the order in appeal No. 34/2010 under the signature of Respondent No.2 but as the said order was not containing the date of passing the same the appellant refused to accept.

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e) It is further the case of the Appellant that on 06/06/2010 he delivered to the office of the Respondent NO.2 a letter, through Verna Police station informing that the said order does not mention the date as to when it is passed. The Respondent NO.2, after perusing the letter, passed one more joint order in appeals bearing No.33/2010, 34/2010 and 35/2010 stating that the said order of the Respondent NO.2 was passed on 03/06/2010 due to exigencies of duty.

f) It is according to the appellant that the order was passed by Respondent NO.2 is beyond the period prescribed.

g) The appellant has challenged the said order on several ground salient being that the order is passed ex parte without hearing the appellant by misusing the powers and exceeding the jurisdiction. According to the appellant the order of the Respondent NO.2 in upholding the order of Respondent NO.1, is deliberate and willful. It the grievance of the appellant that in the said order of Respondent No.2, an order of Hon'ble High Court order passed in criminal application NO.59/2009 dated 04/05/2010 was considered without the same being relied upon by the parties. It is also the ground of the appellant that the information as sought for is wrongly denied by the Respondents.

h) Notice of the appeal was given to the parties to which the Respondent No.1 files reply but the Respondent No.2 did not file any reply nor contested the proceedings.

i) Arguments were heard. The Respondent No. 1 filed its written arguments. Which are in line with the reply. In the said arguments the Respondent NO.1 had tried to support the said denial of Information.

On the other hand the appellant in his arguments submitted that though he has filed the 1st appeal no notice of the same was given to him and the order of the First appellate authority was passed behind his back without hearing him.

j) In view of the above submissions of the appellant this Commission felt it is necessary to examine the records of the F.A.A., which were accordingly called and the same was produced by the FAA.

2.Finding :

A) Considering the grievance of the appellant it was necessary firstly to decide whether the First appellate authority has given sufficient and proper opportunity to the appellant to present his case before it and if it was so then this Commission is required to decide, whether the Act of the PIO vide its reply dt. 10/04/2010 was in accordance with law.

b) We have perused the order passed by the FFA, no where in said order there is any reference that on receipt of the said appeal any notice was given either to the appellant Or Respondent NO.1.

c) In the said order which is impugned herein the first appellate authority, after reproducing the contents of the application filed under section 6 and the reply given by the PIO refers to an order dated 4/5/2010 passed by the Hon'ble High Court of Bombay in criminal revision application No.59/2010. In the same order the FAA reproduces the paragraphs from the said order dated 4/05/2010 passed by the Hon'ble High Court and comes to the conclusion that the reply of the PIO is correct.

d) The above findings of the FAA is not based on any records pertaining to the application of the appellant nor the justification given by the PIO. The entire finding is are based on a judgment of

the Hon'ble High Court in said criminal application No. 59/2009. The FAA has not even taken the pains to substantiate as to how the said order of Hon'ble High Court has a link to the case in hand. Thus we find that the order of the FAA is passed without application of mind. A perusal of the said order dated 04/05/2010 it reveals that there is no relation to the case in hand with said criminal application.

e) It is the further contention of the appellant that the FAA has not heard him in the appeal and hence the same has resulted into miscarriage of justice. We find great force in these submission of the appellant. On perusal of records of the said first appeal, which were common appeals resulting in a common order. No where there is any reference that the appellant or PIO were at all notified. Nor there is a statement in the order of F.A.A that they were notified. There is no explanation in the entire order as to who filed the copy of the order in said criminal (misc) application No.59/2009 in the first appeal.

f) In the course of argument before this Commission the Adv. for the PIO was asked to clarify whether any notice of the appeal was given by respondent NO.2 to PIO or the appellant but he could not submit anything beyond the records of the file of FAA.

g) Thus considering the above facts, and the records pertaining to first appeal before the FAA and on the scrutiny of the records we find that the FAA has committed a serious irregularity of not notifying the appellant to substantiate his grievance nor the PIO to support his reply. The F.A.A. has based the impugned order on extraneous matters without hearing the concerned parties. Thus we find that the conduct of the Respondent NO.2 i.e. FAA is totally casual and mechanical. There is a gross violation of principles of Natural justice and we are unable to concur with the finding of the FAA. We further find that the impugned order cannot survive and is required to be

quashed and set aside. In the circumstances we dispose this appeal with the following:

O R D E R

The appeal is allowed. The impugned order of the FAA, which as per order, dated 09/06/2010 being of 03/06/2010, in appeal No. 34 of 2010 and the order dated 09/06/2010 pertaining to said appeal No.34/2010 are quashed and set aside. The file is remanded to the FAA to hear the 1st appeal No. 34/2010 afresh after giving opportunity to the appellant and respondents No.1 herein to be heard and participate in the hearing and thereafter dispose the same in accordance with law. Respondent No.2 i.e. FAA herein shall dispose the said appeal herein within a period of 30 days from the date of receipt of this order.

The records and proceedings pertaining to 1st appeal Nos. 33, 34 and 35 and 44 of 2010, which are in common file and which is filed herein be returned to the FAA.

Parties to be notified.

No further appeal is provided against this order under the Right to Information Act.

Pronounced in the open Court in the presence of both the parties.

Proceeding closed.

Sd/-
(Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa

Sd/-
(Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission
Panaji-Goa

