

GOA STATE INFORMATION COMMISSION

Kamat Towers, Seventh Floor, Patto, Panaji, Goa

Complaint no. 617/SCIC/2010

Mr.Savio J F Correia,
SS-1 Newton Apartment-II,Mangore Hill,
Vasco da Gama Goa 403802.

-----Complainant

V/S

1. The Public Information Officer,
The Under Secretary (Home II),
Home Department, Government of Goa,
Secretariat , Porvorim Goa.

2. The First Appellate Authority,
The Joint Secretary (General Administration),
Government of Goa,
Secretariat Porvorim Goa.

-----Opponents

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

Appeal filed on:28/12/2010
Decided on:27/7/2016

FACTS:

a) The Complainant by his application, dated 4/10/2010 filed under section 6 of the Right to Information Act, sought the information from the Respondent No. 1, PIO regarding total number of orders for telephone-tapping /interception of telephone conversations in terms of section 5(2) of the Indian Telegraph Act 1885 issued by Home Secretary, Government of Goa during the period 01/01/1997 to 30/4/2010 and Whether Review Committee had been constituted by the Government of Goa in terms of directions of Hon'ble Supreme Court of India in Peoples Union fir Civil Liberties Vs Union of India (Air 1997 SC 568) and/or Rule 419(A)(16) of Indian Telegraph Rules at any time prior to 20/09/2010.

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- b) The said application was replied by Respondent No.1 PIO on 18/10/2010. Query No. 1 was denied on the ground that the similar matter is pending before State Information Commission and as regards to the query No. 2 it was informed to the complainant that the documents are not traceable.
- c) Being not satisfied by the reply of Respondent No. 1 the Complainant preferred the first appeal to the Joint Secretary (GAD) being First Appellate Authority, on 22/10/10, who by order dated 22/11/10 partly allowed the appeal and directed the PIO Respondent no. 1 herein to give statistical data of number of order of telephone tapping/conversation, issued by Home Secretary on 1/1/97 to 30/4/2010, within 15 days from the receipt of the order free of cost.
- d) Despite of order of First Appellate Authority, the Respondent No. 1 PIO failed to provide the information within stipulated period of 15 days. The complainant again moved the First Appellate Authority /Respondent No. 2 by his letter dated 15/12/2010 and informed the First Appellate authority, that Respondent NO. 1 has failed and neglected to comply with his order and again called upon Respondent NO. 2 First Appellate Authority to direct the PIO/Respondent No. 1 to immediately comply with and give effect to the said order dated 22/11/2010. In spite of which no information was furnished.
- e) The Complainant thus has approached this Commission in a complaint under section 18 of the Act and has prayed for information as per said order of First Appellate Authority dated 22/11/2010 as also for penalty and recommendation of disciplinary action.
- f) After notifying the parties the matter was heard. During the hearing appellant remained present in person. The Respondent No. 1 was represented by APIO Priyanka Vaigankar .

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FINDINGS:

- a) On Scrutiny of file it is seen that a reply was earlier filed by the Opponent No. 1 PIO on 24/2/2011 . Vide their reply they have submitted that the Government was examining the matter for consideration of challenge to the order of First Appellate Authority and it was not possible to comply with direction as much as the State Government had preferred a Second appeal bearing Appeal No. 2/SCIC/2011 under section 19(3) of the Right to Information Act. And as such that they claim that there was bonafides on their parts.
- b) It is pertinent to note that during the arguments the Respondent No.1 had not clarified the outcome of second appeal that is no. 2/SCIC/2011 and hence the Commission decided to verify the records of second appeal and the records were perused. On scrutinizing the records, it was seen that the second appeal No. 2/SCIC/11 was dismissed by this commission on 29/4/2016. The respondent No. 1 during argument has not submitted before the Commission whether the said order is under challenge before the Hon'ble High Court or not. In absence of any of such specific submission/ records we hold that the same is not challenged by them. As such the order passed by First Appellate Authority still holds good.
- c) During the hearing before this commission at no point of time PIO have come up with case that information at query no. 1 is not available in Department. The said stand was also not taken before First Appellate Authority on the contrary order of First Appellate Authority has held that that the information in respect to query No. 1 is not secret and does not come within the ambit of section

8 of Right to Information Act. Being so it can be presumed that said information was available in their records.

- d) In the first appeal the Respondent No. 1 PIO remained present and made all submission available to him and after consideration of submission of both the parties PIO was directed to furnish the information. The appeal was thus for purpose to furnished information which was refused by the PIO and the PIO after order of First Appellate Authority has no jurisdiction or power to go back to the application under section 6 and then again to give a fresh reply/decision to the appellant stating that the information requested by him is not available in Department. The order of First Appellate Authority was mandatory in nature and required only to be complied. In spite of the same the PIO assumed Jurisdiction under section 7 of the Act which was uncalled for.
- e) Respondent NO. 1, PIO herein on 13/6/16 vide additional reply informed the complainant that the information is "not available". The copy of the same was filed with this commission being a memo on 24/6/2016. The conduct of PIO in the circumstances does not appear to be fair and stand taken by them subsequently appears to be after thought. The said additional information is given in very casual manner. PIO have not clearly spelt out what do they mean by "not available" they ought to have come up with specific reply whether they were maintaining the same or not and if maintained then when the records were destroyed and what was the policy adopted for such disposal. There out to have been explanation as to whether the records were existing at the time of filing application under section 6 and later became unavailable. Thus the PIO has not substantiated his reply to query No. 1.

- f) As regards query No. 2, they ought to have given straight forward answered. They ought to have replied whether Committee is constituted or not. It appears that they are trying to bit around the bush to cover up the lapses committed by them.
- g) The appellant vide his said application, dated 2/4/2010 had requested for number of order for telephone tapping during a particular period a statistical data. They have not asked for any other details concerning the said orders as such they cannot come under the ambit of section 8(1) (a) of Right to Information Act as in the defence raised by PIO.
- h) At para one their reply of Respondent No. 1 dated 24/2/2011 it is also stated by PIO that necessary action was being taken for compliance, but it was felt that the information being confidential in nature and state was entitled to exemption.

We are unable to accept these contentions as the information sought is not the details but extracts which, if disclose will not jeopardize the security concern. Besides the information sought is old pertaining to the year 1/1/97 to 30/4/10.

- i) The complainant has also sought for imposition of penalty under section 20(1) of the Right to Information Act on the PIO /Opponent No. 1 for refusal to furnish information to the complainant malafidely and without any reasonable cause and also sought for recommendation of disciplinary action on Respondent No. 1 PIO.

However considering the peculiar circumstances involved herein that the issue is contended to be a sensitive one, as apprehended by the PIO then, which also appear so, we refrain from imposing any penalty and /or compensation as prayed.

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We therefore dispose the present complaint with the:

ORDER

1. Respondent NO. 1 PIO is hereby directed to comply with the order of First Appellate Authority dated 22/11/2010 in First Appeal No. 149 and to furnish information at query No. 1 and 2 of application, dated 4/10/10 filed under section 6 of Right to Information Act, within 20 days from the date of receipt of this order, to the complainant, free of cost.
2. Prayer B and C stands rejected .

Parties to be notified . Proceedings closed.

Pronounced in open proceedings.

Sd/-

(Prashant S. P. Tendolkar)

State Chief Information Commissioner
Goa State Information Commission,
Panaji-Goa

Sd/-

(Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa