

**GOA STATE INFORMATION COMMISSION**

'Kamat Towers' Seventh Floor, Patto, Panaji – Goa

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**Appeal No. 212/SIC/2010**

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

Shri Savio J. F. Correia,  
SS-1, Newton Apartment-II  
Mangor Hill,  
Vasco da Gama –Goa.

....Appellant

V/s

1) PIO/Under secretary (Home-II)  
Home Department Govt. of Goa,  
Secretariat Porvorim-Goa.

2) FAA/The Jt. Secretary (Gen.Admn.),  
Secretariat, Porvorim-Goa.

.... Respondent s

Filed on: 16/09/2010

Disposed on:04/05/2017.

**1) FACTS:**

a) The appellant herein by his application, dated 10/05/2010 filed u/s 6(1) of The Right to Information Act 2005 (Act) sought copies of the orders issued by Home Secretary, Government of Goa u/s 5(2) of the Indian Telegraph Act during period 01/01/1997 to 30/04/2010.

b) According to appellant the said application was responded to by the PIO on 08/06/2010 by informing that the matter is under examination, but no information was furnished. As such deeming the same as refusal appellant filed first appeal to the respondent no.2, being the First Appellate Authority.

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c) The First Appellate Authority (FAA) by order, dated 23/08/2010 dismissed the said appeal.

d) The appellant has therefore landed before this Commission in this second appeal u/s 19(3) of the act.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 27/01/2011 had filed a reply to the appeal. Arguments of the appellant were heard. On subsequent dates the PIO filed her affidavit in reply as additional reply.

## **2) FINDINGS:**

a) The appellant by his said application u/s 6(1) dated 10/05/2010 has sought copies of orders issued by Home Department, Goa u/s 5(2) of the Indian Telegraph Act. Though the said application was not replied by PIO, in the first appeal filed by appellant, the PIO has resisted the information of the ground of exemption under section 8(1) (a) of the act.

b) Considering the said defense, it is now necessary to consider the nature of information sought by appellant to qualify for exemption from disclosure. The appellant has sought the copies of all orders issued by Home Department u/s 5(2) of the Indian Telegraph, Act 1885 herein after referred to as "**Telegraph Act**" said section 5(2) of the said act reads:

**5. Power for Government to take possession of licensed telegraphs and to order interception of messages.—**  
**(1)** -----

***(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:***

***Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.***

c) On careful analysis of the above provision of Telegraph At, it is revealed that the interception of any telegraphs, messages can be undertaken only in cases when there is occurrence of public emergency or in the interest of public safety. The proposition that follows from the above is that when there is interception of communication is proceeded by existence of a situation of public emergency or interest of public safety.

d) Considering the above proposition, it would be now appropriate to consider the grounds on which the information is refused. The FAA has justified his order refusing information under the exemptions cast u/s 8(1)(a) of the Act. Said section 8(1)(a) of the act reads:

**8. Exemption from disclosure of information. \_\_\_\_\_**  
**(1) Notwithstanding anything contained in this Act,**  
**there shall be no obligation to give any citizen,\_\_\_\_\_**  
**(a) information, disclosure of which would prejudicially**  
**affect the sovereignty and integrity of India, the**  
**security, strategic, scientific or economic interests of**  
**the State, relation with foreign State or lead to**  
**incitement of an offence;**

e) Thus considering the above exception provided u/s 8 (1) (a) of the act, read with section 5(2) of the Telegraph act, we do not find any error on the part of PIO in refraining from dispensing the sought information. Consequently no fault can be found with the order of FAA in concurring with the view of PIO.

f) The second contention of the appellant is that the FAA has applied a blanket ban on all orders issued u/s 5(2) of the Telegraph Act and has misinterpreted the provisions of the RTI Act.

g) For the purpose of deciding such issue, it would be necessary to consider the scope of this Commission in deciding the merits of the order passed by the Government u/s 5(2) of the Act. Section (7) (2) (b) of the Telegraph Act confers powers on the Government to frame rules consistent with the act for the precautions to be taken for preventing improper interceptions or disclosure of messages. By exercising the powers under section said section 7(2) (b), the Government of India has framed rules. At rule 419(A)(16) of The Indian Telegraph (Amendment)Rules 2007, mandates the State Government to form a review committee comprising of three

officers mentioned therein. The powers of such review Committee is contained at rule **419 A(17)** which reads:

*"(17) The review committee shall meet atleast once in two month and record its findings whether the directions issued under sub rule(1) are in accordance with the provisions of sub section(2) of section 5 of the said act. When the Review committee is of the opinion that the directions are not in accordance with the provisions referred to above it may set aside the directions and orders for destruction of copies of the intercepted message or class of messages."*

10) Considering the above provision, it is within the scope and powers of the Review Committee to find out whether the directions issued are in accordance with section 5(2) of the Telegraph Act and in case it is found that it is not so, then it is the said review Committee which can set aside such directions issued u/s 5(2) as also destroy the intercepted messages and records. This position of law thus implies that the directions issued u/s 5(2) shall exist till terminated by review committee. Consequently the exemption caste on such information u/s 8(1) (a) of the act will also continue till then.

h) According to the appellant herein, in his submissions has submitted that such review committee is constituted on 21/09/2010. Towards such submissions he has also produced the copy of gazette, dated 30/09/2010 issued by Government of Goa. This being the position, any finding by this commission regarding the validity of order issued u/s 5(2) would also amount to usurping the powers of the review committee, which are not granted to the commission under the act.

The appellant has also produced the judgment of the Apex court in the case of *People's Union for Civil Liberties*. In the said case the apex court has considered the validity of the telephone tapping and has issued certain directions for the purpose of considering the issues of tapping by the review committee. The said judgment nowhere concludes or holds that the issuance of orders under telegraph act are/ can also be issued in cases other than in the cases of national emergency of security nor it holds that the information can be dispensed notwithstanding such orders u/s 5(2) of the Telegraph Act. Hence the said citation does not help us in the present case.

l) Considering the above facts and the law on the subject we hold that the interception of telephones by the Government in exercise of powers under section 5(2) of the Telegraphs act, being in the interest of public security, would attract exemption u/s 8(1)(a) of the act, till the action of Government ordering interception, is set aside by the review committee.

In the above circumstances we find no illegality in the order of the FAA, refusing to furnish the information, we therefore find no merits in the appeal and hence we dispose the same with the following:

### **ORDER**

The appeal is dismissed. The order, dated 23/08/2010 passed by the First Appellate Authority in Appeal No. Appeal/RTI Act No.136, is upheld.

...7/-

Rights of the appellant to seek information, if any, after disposal of the proceedings before the review committee and as may be permissible under the law, are kept open.

Pronounced in the open Court.

Notify the parties.

Proceedings closed.

Sd/-

**(Mr. Prashant S. Prabhu Tendolkar)**  
State Chief Information Commissioner  
Goa State Information Commission  
Panaji-Goa

Sd/-

**(Ms. Pratima K. Vernekar)**  
State Information Commissioner  
Goa State Information Commission  
Panaji-Goa