

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

Shri Prashant S. P. Tendolkar,
State Chief Information Commissioner

Appeal No.193/2018/CIC

Rahul Basu,
D3 & 4 Bay View,
204 Nagalli Hills, Streets 3 Lane 1,
Dona Paula –Goa 403004.

....Appellant

V/s

- 1) The Public Information Officer,
The Directorate of Mines and Geology,
Panaji Goa 403001.
- 2) First Appellate Authority,
Directorate of Mines and Geology
Panaji Goa 403001.

.....Respondents

Filed on: 20/08/2018

Disposed on: 16/11/2018

Appeal No.209/2018/SCIC

Rahul Basu,
D3 & 4 Bay View,
204 Nagalli Hills Streets 3 Lane 1,
Dona Paula –Goa 403004.

....Appellant

V/s

- 1) The Public Information Officer,
The Directorate of Mines and Geology,
Panaji Goa 403001.
- 2) First Appellate Authority,
Directorate of Mines and Geology
Panaji Goa 403001.

.....Respondents

Filed on: 03/09/2018

Disposed on:16/11/2018

As both the above appeals are between the same parties and involving a common point to be decided,

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both the appeals are decided by this common order. For the purpose of brevity the above appeal no. 193/2018/CIC is hereinafter referred to as **THE FIRST APPEAL** and the appeal no. 209/2018/CIC is hereinafter referred to as **THE SECOND APPEAL**

1. FACTS IN BRIEF IN FIRST APPEAL:

- a) The appellant herein by his application, dated 10/05/2018 filed u/s 6(1) of The Right to Information Act 2005 (Act for short), sought information from the PIO, Finance (Revenue and Control) Department, Secretariate, Porvorim Goa, on five points in the form of details of ledger for royalty, annual account of District Mineral foundation, bank book maintained as also annual account of Goa Iron Ore Permanent Fund (GIOPF) and its account book.
- b) The said application was transferred to the PIO, herein on 10/05/2018, u/s 6(3) of the Act.
- c) The PIO, the respondent no.1 herein, by letter, dated 18/06/2018 read with another letter, dated 21/06/2018 furnished the information on points (1) to (3). However the information on points (4) and (5) which pertained to accounts and account book of GIOPF, was refused on the ground that the same is subjudice.
- d) Aggrieved by the said response of respondent no.1, the appellant filed first appeal to the First Appellate Authority (FAA), who by order dated 25/07/2018 upheld the decision of the respondent PIO and dismissed the appeal.
- e) The appellant has therefore landed before this commission in second appeal u/s 19(3) of the Act being appeal no.193/2018/CIC, herein above.

2) FACTS IN BRIEF IN SECOND APPEAL:

a) The appellant herein by his application, dated 28/05/2018 filed u/s 6(1) of The Right to Information Act 2005 (Act for short), sought information from the Respondent No.1, PIO herein in the form of details pertaining to Goa Iron Ore Permanent Fund (GIOPF) on (7) points as contained in the said application.

b) By letter, dated 27/06/2018, Respondent No.1 PIO herein replied that the information sought cannot be provided as it is subjudice.

c) Aggrieved by the said response of respondent no.1, the appellant filed first appeal to the First Appellate Authority (FAA), who by order dated 16/08/2018 upheld the decision of the PIO.

d) Being aggrieved by the said order of the FAA the appellant has landed before this commission in second appeal u/s 19(3) of the Act.

3) In the reply filed by PIO in both the above appeals it is contended that the information was not provided to the appellant on account of the fact that the same is subjudice in nature by way of to W.P.no.435/2012, IA-87.

4) As the issues involved in both the appeals was common i.e. *whether the pendency of matter before court would deprive the appellant from seeking information, u/s 8(1)(b) of the act*, common arguments were heard on both the above appeals.

5) Adv A. Ghode appearing on behalf of the appellant, in her submissions contended that in fact there is no pendency of any matter pertaining to the subject matter of information. What is pending before Hon'ble Supreme Court is a proceeding inter alia seeking direction that mining leases in Goa do not have to contribute towards GIOPF after coming in force of the MMDR (Amendment) Act 2005. According to her what is sought is the information as it exist now with the PIO. According to her mere pendency of proceedings does not take away right of seeker to have information and that there is no order of any court restraining the PIO to furnish information.

On the other hand PIO, Smt S. Revonkar submitted that a writ petition is pending in the Supreme Court regarding the liability of mining lesses to contribute towards the GIOPF. She also produced copy of the writ petition and submitted that as the matter is pending before Supreme Court, its dispensation is exempted u/s 8(1)(b) of the act.

6) Perused the records and considered the submissions. The information involved in both the above appeals is denied under the exemption created under section 8(1)(b) of the act, which reads.

“8. **Exemption from disclosure of information** –

(1) notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-----

(a)

(b) information which has been expressly forbidden to be published by any court of law or tribunal or

the disclosure of which may constitute contempt of court;

If one analysis the said provision, in order to claim such exemptions the required ingredients are that, there should be a specific order/direction/writing from any court of law or tribunal forbidding disclosure.

In the present case there is no specific order either from the Hon'ble Supreme Court or from any other court forbidding supply of information. Considering the above facts, said section 8(1)(b) nor any of the exemptions under the act anywhere forbids dispensation of information just because of pendency of proceeding. I find that the exemption from disclosure from information is not available to the PIO in the present cases.

7) On perusal of the orders passed by FAA in both above proceeding it is seen that the said authority has adopted a mechanical approach, and lost the site of the basic requirements of section 8(1)(b), that it requires a specific and express order from court retraining disclosure. Hence I am unable to concur with the view adopted by FAA.

8) Considering the above provision of law and the subject matter involved herein, I find that, as the information sought in both these appeals, is not exempted, either under section 8(1)(b) or any other provision, the same has to be disclosed.

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9) On the backdrop of the facts as narrated above, I dispose both the above appeals by this common:

O R D E R

The appeals are allowed. The orders passed by FAA are set aside. PIO shall furnish to the appellant the information at points (4) and (5) of his application, dated 10/05/2018 and the entire information as sought vide application, dated 28/05/2018, within fifteen (15) days from the date of receipt of this order. The information shall be furnished free of cost.

Notify the parties.

Proceedings closed.

Pronounced in open hearing.

Sd/-

(Shri. P. S.P. Tendolkar)

Chief Information Commissioner
Goa State Information Commission
Panaji –Goa