

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No. 161/2018/CIC

Mr. Vinesh V. Arlenkar,
r/o. Shraddha Niwas,
H.No. B-50, Vidya Enclave,
Porvorim, Bardez Goa.

....Appellant

V/s

- 1) The State Public Information Officer
The Dy. Director of Vigilance,
Dte. Of Vigilance, Altinho,
Panaji Goa.
- 2) First Appellate Authority,
Director of Vigilance,
Altinho, Panaji Goa.

....Respondents

Appeal No. 162/2018/CIC

Mr. Vinesh V. Arlenkar,
r/o. Shraddha Niwas,
H.No. B-50, Vidya Enclave,
Porvorim, Bardez Goa.

....Appellant

V/s

- 1) The State Public Information Officer
The Dy. Director of Vigilance,
Dte. Of Vigilance, Altinho,
Panaji Goa.
- 2) First Appellate Authority,
Director of Vigilance,
Altinho, Panaji Goa.

....Respondents

Both Filed on: 25/06/2018
Both Disposed on: 16/11/2018

As both the above appeals are between the same parties and involving a common point to be decided, both the appeals are decided by this common order. For the

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purpose of brevity the above appeal no. 161/2018/CIC is hereinafter referred to as **THE FIRST APPEAL** and the appeal no. 162/2018/CIC is hereinafter referred to as **THE SECOND APPEAL**.

1. FACTS IN BRIEF IN FIRST APPEAL:

a) The appellant herein by his application, dated 12/01/2018 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 certified copies of entire files of noting side and correspondence side of enquires investigation conducted by Anti Corruption Branch (ACB) Director of Vigilance and Technical section of Director of Vigilance.

b) The said application was transferred to the technical section on 15/01/2018, u/s 6(3) of the Act.

c) The PIO, technical section by letter, dated 05/02/2018 refused to furnish the information to the appellant claiming exemption under section 8(1) (h) of the Act.

d) In the meantime on 01/02/2018, the respondent No.1 also informed the appellant that the information sought cannot be furnished in view of section 8(1) (h) of the Act as the matter is under inquiry. It was further informed that the documents, which the appellant was entitled to under CCS (CCA) Rules 1965 has been already furnished.

e) Aggrieved by the said response of respondent no.1, the appellant filed first appeal to the First Appellate Authority (FAA), who by order dated 20/04/2018 upheld the decision of the respondent PIO and dismissed the appeal.

f) The appellant has therefore landed before this commission in second appeal u/s 19(3) of the Act.

2) FACTS IN BRIEF IN SECOND APPEAL:

a) The appellant herein by his application, dated 18/1/2018 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 certified copies of entire files of noting side and correspondence side of enquires investigation conducted by Anti Corruption Branch (ACB) and the Director of Vigilance. .

b) By letter, dated 13/02/2018 PIO replied that the information sought cannot be spared in view of section 8(1) (h) of the Act as it will impede the process of investigation. It was further informed that the documents, which the appellant was entitled to under CCS (CCA) Rules 1965 has been already furnished to the appellant vide letter dated 14/12/2017.

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 20/04/2018 upheld the decision of the respondent PIO.

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

3) Parties were notified pursuant to which PIO filed her reply. In the reply filed in the appeal, it was contended by PIO that the appellant has been furnished with the correct reply and hence there is no cause of action to file the present appeal. By narrating the sequence of events,

it is submitted by PIO that as the matter was at the stage of inquiry before inquiry Authority information cannot be spared in view of section 8(1) (h) of the act. It was further contended that the documents to which the appellant was entitled to under CCS (CCA) rules 1965 had been already furnished vide letter, dated 29/04/2016 & 12/01/2018. According to PIO vide letter, dated 01/02/2018 the PIO has informed the appellant that the information could not be furnished in view of section 8(1) (h) of the act as it would impede investigation and that whatever the documents the appellant was entitled to under the CCS(CCA) rules 1965 has been furnished.

The PIO in the said reply has also relied upon the orders passed by several information commissions in support of her contentions that the proceedings of inquiry also constitute investigation. However the other information commissions having jurisdiction concurrent to that of this commission, said orders cannot be considered as binding.

In the second appeal also the PIO has also raised similar defence and relied upon the same orders of other State Commission or Central Information Commission.

4) As the issues involved in both the appeals was common i.e. whether the departmental inquiry amounts to part of investigation and hence information exempted u/s 8(1) (h) of the act, common arguments were heard on both the above appeals.

5) Adv. N. Kamat, appearing for the appellant in his arguments submitted that grounds of PIO to refuse the information were not justified. According to him the exemption from disclosing information u/s 8(1)(h) is available in the cases of pending investigation. According to him the allegations made against the appellant has been investigated and on the bases of report of investigation departmental inquiry has been initiated and charge sheet is issued. Hence, according to Adv. Kamat there is no pending investigation and the one which was pending, has been culminated into an inquiry.

Further according to Adv Kamat when allegations regarding any misconduct of the person are received, an investigation is conducted by authorised persons. Based on the report if any prima facie case is made out then departmental inquiry is ordered. After conclusion of inquiry if guilt is proved then further punishment is ordered as per the service conditions. According to him moment the report is submitted by investigation agency, the investigation stands concluded.

In support of his contentions Adv. Kamat relied upon the judgments passed by High Court of Delhi in *writ petition (c) 295/2011 (B. S. Mathur v/s Public Information Officer)*, *writ petition (c) 3543/2014 (Adesh Kumar v/s Union of India)* and in *writ petition (c) 6341/2015 and C.M. Nos. 11546/2015 and 35797/2016 (Union of India v/s Manujit Singh Bali)*.

6) PIO, Smt. Nathine Araujo, in her arguments by highlighting the movement of the appellants, applications submitted that the PIO has

furnished the correct reply within the prescribed period.

According to her on the bases of a complaint received against the appellant, the technical section of Directorate of Vigilance has carried out investigation and on the bases of report the appellant has been issued charge sheet and further inquiry in the charges is pending. Thus according to her the investigation is not finally concluded and thus information sought comes under the exemption u/s 8(1)(h) of the act.

PIO Smt. Nathine Araujo in her arguments by highlighting the movement of the appellants application submitted that the PIO is furnished with the correct reply within the prescribed period under the act. Further

7) Perused the records and considered the submissions of the parties. Considering the rival contentions, the point to be decided is whether the subject pertaining to which the information is sought is under investigation.

Section 8(1)(h) of the act, under which exception the information is rejected to the appellant herein, reads:

“8(1) Notwithstanding anything contained in this act, there shall be no obligation to give any citizen,-

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h) Information which would impede the process of investigation or apprehension or prosecution of offenders;”

8) The act does not define the word investigation as contained in section 8(1)(h). The inquiry as referred in present proceedings is quasi criminal in nature. However The code of criminal procedure 1973, under section 2(h)

defines "Investigation" as includes all proceeding under this code for collection of evidence conducted by a Police Officer or by any person (other than a magistrate) who is authorised by a magistrate in this behalf".

In legal parlance also the word 'Investigation' would entail collecting of evidence either in oral form by examining witnesses or by collecting documentary evidence.

9) In the present cases admittedly in first appeal a charge sheet is issued to the appellant, reply is filed thereon and inquiry into charges is in progress. In the second appeal charge sheet is issued and is pending for filing of reply by appellant to charges. According to PIO all the annexures to the charge sheet are served to the appellant as are required under CCS Rules, which according to PIO are relevant to the case of appellant. It is hard to hold that a charge sheet is issued without collection of evidence. The corollary is that after conclusion of investigation and only after availability of evidence, that a charge sheet is issued. Thus no further investigation exists. What remains is only the inquiry on the charges to be followed by penalty, if charges are proved.

10) The extent upto which the veil of exemption from disclosure u/s 8(1)(h) is available to PIO is laid down by the Hon'ble High Court of Delhi in the case of *S. M. Lamba v/s S. C. Gupta and another (W.P.(C) No.6226/2007*. In the said Judgment the extent to which such exemption would extend is laid down in the following words at para (8) and (9) of said judgment.

“8. A perusal of Section 8 (1) (h) of the RTI Act shows that information can be withheld which? would impede the process of investigation or apprehension or prosecution of offenders?. In the present case the charge sheet having been filed upon completion of investigation, there can be no apprehension that the disclosure would impede the progress of the investigation. It would also not impede the trial which is already in progress.

9. In that view of the matter, there is no justification in withholding the information sought by the Petitioner at (iii) above. Consequently, the impugned order of the Central Information Commission is modified to the extent that the Respondent Bank is directed to make available to the petitioner the information at (iii) above within two weeks from today. It will be open to the Respondent Bank while furnishing the above information, to conceal the names of any of the other officers whose names may be reflected.”

11) Section 8(1)(h) prohibits information only in cases where investigation is pending. The said exemption is further of such a nature that it should impede the process of investigation or prosecution of offenders. Thus while, refusing the information on this court, it is necessary that additional threat of hampering or interference would also have to be established by PIO.

12) In the case of *B. S. Mathur v/s Public information Officer of Delhi High Court* (Supra) as relied upon by Adv. Kamat on behalf of the appellant, while dealing with the case of refusal of information u/s 8(1)(h) of the act High Court of Delhi has held that while rejecting request for information it is not sufficient to simply reproduce the wordings of said section but it is also necessary to clarify as to how disclosure would impede the process of investigation. Such

observation are contained in para (19) of said judgement which reads

“ 19)The question that arises for consideration has already been formulated in the courts order dated 21st April 2011. Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would “impede the investigation” in terms of section 8(1) (h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in section 8 RTI Act. As regards section 8(1) (h) RTI Act, which is the only provision invoked by the respondent to deny the petitioner the information sought by him, it will have to be shown by the public authority that the information sought “would impede the process of investigation.” The mere reproducing of the wording of the statute would not be sufficient when recourse is had to section 8(1) (h) RTI Act. The burden is on the Public Authority t show in what manner the disclosure of such information would impede the investigation. Even if onewent by the interpretation placed by this court in W.P.(C) no. 7930 of 2009 [Additional Commissioner of Police (Crime) v. CIC, decision dated 30/11/2009] that the word “impede”

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would “mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of the investigation”, it has still to be demonstrated by the Public Authority that the information if disclosed would indeed “hamper” or “interfere” with the investigation, which in this case is the second enquiry.”

Considering the grounds for rejection of the information in the above appeals, I find that the said ratio is squarely applicable herein.

13) In the case of *Adesh Kumar* (supra) relied upon by Adv. Kamat, the Hon’ble High Court of Delhi, by relying on the ratio laid down in the case of *B.S. Mathur* (supra) has once again held that verbatim reproduction of the ground as contained in section 8(1)(h) is not sufficient but what is required from Public Authority is to show in what manner the disclosure would impede investigation. In the same judgment it was also held that whether the information sought was relevant or necessary is not relevant or germane and that a citizen has a right to information by virtue of section (3) of the act. It was also held in the said judgment that the fact, that seeker of information has access to the material relied upon by the prosecution, does not prevent him from seeking information which he considers necessary for his defence.

14) A further reading of the said judgment in the case of *Adesh Kumar* more particularly at para 3.2 thereof, reveals that the facts involved therein are identical to those

involved in present appeal. In the said case, like the facts herein the information was sought after filing of the charge sheet.

15) I have perused the order passed by the First Appellate Authority. In the said order, while discarding the judgement in the case of *Adesh Kumar* (supra) the FAA has lost the site that the facts therein were identical to the present appeal. In the present case the ground for rejection of the information is the exemption u/s 8(1) (h). No where it is clarified by PIO as to how it would factually impede the investigation. The FAA has not considered this aspect, which is the backbone of the judgment in case of *Adesh Kumar* (supra).

16) Considering the above position I find that the information as sought by appellant in both his application does not attract the exemption u/s 8(1)(h) of the act and hence the same is dispensable under the act. In the above circumstances I proceed to dispose the above appeals by the following common.

O R D E R

Both the above appeals are allowed. The order of FAA is set aside. The PIO shall furnish to the appellant, free of cost, the information sought by him vide his applications dated 12/01/2018 and dated 18/01/2018, filed u/s 6(1) of The Right to Information Act 2005, within fifteen days, from the date of receipt of this order. Order to be notified.

Proceeding closed.

Pronounced in open hearing.

Sd/-

(Shri. P. S.P. Tendolkar)

Chief Information Commissioner
Goa State Information Commission
Panaji –Goa

