

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

Appeal No. 65/2017/SIC-I

Shri Munnalal Halwai,
5th Floor, F.F.Complex,
Above Bank of Baroda,
Vasco Da Gama.
Mobile No. 9422063115.

....Appellant

V/s

1)The Public Information Officer,
Smt. Nathin Araujo,
Dy. Director, Vigilance,
Altinho, Panaji-Goa.

2)First Appellate Authority,
Shri Narayan Sawant,
Director, Vigilance,
Directorate of Vigilance,
Altinho, Panaji – Goa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 23/05/2017

Decided on: 20/3/2019

ORDER

1. The brief facts leading to present Appeal are that the Appellant Shri Munnalal Halwai herein by application dated 16/2/17, filed u/s 6(1) of the RTI Act, 2005 sought certain information from the Public Information Officer, Office of Chief Secretary, Secretariat, Porvorim under three points there in.
2. The PIO of the office of the chief secretary by letter dated 20/2/2017 transferred the said application of the Appellant to the PIO/Additional Director (vigilance), Directorate of Vigilance, Altinho-Panjim in terms of sec 6(3) of the RTI Act as the file No. ACB-VIG-COM-116-2016 was forwarded to the office of Respondent PIO vide entry No.569 on 27/1/2017.
3. It is the contention of appellant that as there were lots of threatening act were going against him as such he had sought the

said information to be furnished within 48 hrs as it concerned his life and liberty.

4. It is the contention of the appellant that the said application was responded by Respondent No.1 PIO on 22/3/2017 interalia informing Appellant that his complaint dated 11/8/2016 against IGP Shri. Sunil Garg, P.I.S. is under investigation and hence the information sought by him cannot be spared at that stage in view of section 8(1)(h) of the RTI Act, 2005, as it will impede the process of investigation.
5. It is the contention of the appellant that he being not satisfied with the said response and as the information as sought was not furnished; the Appellant filed first appeal on 29/3/2017 against the decision of the public information officer interms of section 19(1) of RTI Ac 2005.
6. It is the contention of the appellant that the Respondent No. 2 first appellate authority by an order dated 20/4/2017 dismissed the appeal filed by the Appellant by upholding the say of the Respondent No. 1 PIO.
7. It is the contention of the appellant that he being aggrieved by the actions of both the Respondents, has approached this commission on 22/05/2017 in the 2nd appeal filed u/s 19(3) of the act and also under complaint u/s 18 of the act on the ground raised in the memo of appeal and with a contention that information still not provided to him by the Respondent No.1 as was sought by him.
8. In this back ground the appellant has filed this appeal thereby seeking direction as against PIO for furnishing the information as sought by him.
9. In pursuant to notice of this commission, the Appellant appeared in person. Respondent PIO Mrs. Nathin Araujo was present and

on behalf of Respondent No. 2 Shri. Jayprakash, Senior Officer, Home Department was present on one occasion.

10. Reply filed by Respondent No. 1 on 11/10/2017 along with enclosures and by Respondent No. 2 FAA on 6/9/2017.
11. It is the Contention of the Appellant that he had filed a Complaint dated 11/08/2017 against the then Inspector General of Police Shri. Sunil Garg for demanding and accepting the bribe money of Rupees Five Lakh Fifty Thousand. It was further contended that an criminal application No. 87/2016 u/s 156(3) was filed by him before the Hon'ble court in view of non registration of FIR into the complaint dated 11/8/2016 lodged by him.
12. It is the contention of the Appellant that his life and liberty was in danger after lodging complaint against Sunil Garg and after submitting criminal miscellaneous application u/s 156(3) and hence he was entitled for getting the said reply within 48 hrs as provided u/s 7(1) of RTI and that failure to do so amount to refusal of the information sought.
13. It is the contention of the Appellant that Respondent No. 1 PIO provided him false and fabricated information on the assumption that his Complaint dated 11/8/2016 was under investigation. According to him the Chief Secretary had already concluded enquiry into his Complaint through administrative aspect and has sent his findings to the Director of Vigilance in order to convey the same to Anti Corruption branch of vigilance who had registered the preliminary inquiry no 4/2016 for conducting inquiry through technical /criminal aspect.
14. According to the appellant the Respondent PIO failed to show satisfactory as to why the release of such information would hamper the investigation process and mere reproducing of the wording of the statute would not be sufficient especially when the office of the PIO is not holding the inquiry or investigation. It is

his contention that when the information sought is not in possession of the PIO or if he is not authority to provide the information recourse ought to have taken to the provisions of section 6(3) of RTI Act.

15. It was contented that onus under section 19(5) of the RTI act is under public authority and section 8(1)(h) does not provide for the blanket exemption covering all information relating to investigation process and partial information wherever is justified can be granted.
16. It is the contention of the appellant that since he did not received the information sought vide application dated 16/2/2017 from Respondent no.1, he filed fresh application on 8/2/2018 under RTI before the PIO, Anti Corruption Branch and after long legal fight he succeeded in getting the part information after filing first appeal. It is his contention that he got the information pertaining to point No. 1 of his RTI application dated 16/2/2017 on 18/6/2018 from the office of ACB and the information pertaining to point No. 2 and 3 of his application dated 16/2/2017 have not been received by him till date.
17. It is his further contention that the Chief Secretary of the State of Goa had conducted inquiry through administrative aspect and Anti Corruption branch is conducting the preliminary Inquiry No. 4/2016 through technical/criminal aspects and that both the above authorities have provided him information as and when sought by the Appellant.
18. It is his contention that due to the malafide and false information (rejection) provided by PIO Mrs. Natin Araujo he had to suffer a lots and due to non furnishing the information, he was not able to represent appeal filed by the Shri Sunil Garg IPS in the High Court against the order of Sessions court and due to which he lost the said appeal.

19. It is his contention that he has approached the Hon'ble Supreme court against the order of High Court Bombay at Goa and the Hon'ble supreme court is seized with the matter and he requires the said information in order to produce the same before the Apex Court.
20. The Respondent PIO on the other hand had submitted that she had furnished the correct reply within the prescribed time to the appellant. She further submitted that since the information sought by the appellant within 48 hrs alleging that it concerns his life and liberty and the complainant had not produced anything on record to substantiate the same as such in the interest of justice the RTI application was forwarded to the Superintendent of Police, of South Goa District to find out whether there is truth in the application of Appellant however no reply in the affirmative was received from the Superintendent of Police South.
21. It is a contention of PIO that at the given time the application was made and when the information was sought within 48 hrs she was deputed for election duty in the office of Chief Electoral Officer, Altinho and her charge was given to another officer.
22. It is her further contention that while processing the RTI application of the appellant, relevant files were called for by her and it was seen that the investigation in the matter was still under progress, as such by the letter dated 23/2/2017 she informed the Appellant that the information sought cannot be spared in view of Section 8(1)(h) of the RTI Act since the matter was under investigation and sharing the same would have impeded the process of investigation.
23. It was further contented that no investigation could be said to be completed unless it has reached the point where the final decision on the basis of that investigation is taken and she relied upon the rulings given by the central information commission.

24. In a nutshell it is case of the Respondent PIO the matter was under investigation and the grounds raised by the appellant in the present appeal are baseless without any support as well documentary evidence.
25. The Respondent No. 2 vide his reply dated 6/09/2017 have contended that he had decided the application vide order dated 20/04/2017 on merit.
26. During the argument the Respondent PIO submitted that the file pertaining to information sought was forwarded to Anti Corruption Bureau/ Vigilance by the Director of Vigilance for conducting investigation into technical and criminal aspects and presently the file is with the ACB and there is a designated PIO for the said division. The said fact is also not disputed by the appellant herein.
27. The exemption under section 8(1)(h) is for limited period and once process of investigation is completed, the disclosure of information no longer causes impediment to the prosecution. The records pertaining to information sought are presently in the possession with the ACB for conducting preliminary inquiry and there are no records available in the file showing the status of said inquiry. PIO of ACB is not an party to the present proceedings. I am of the considered opinion that opportunity has to be granted to the PIO of the ACB (Vigilance) to appropriately deal with the application.
28. In the above given circumstances, I find the ends of justice will meet with following directions .

Order

The Respondent No. 1 PIO, of the Deputy Director of Vigilance is hereby directed to transfer point no. 2 and 3 of the original application dated 16/2/2017 filed by the appellant to the PIO of

ACB/Vigilance within three days from the receipt of the order and the PIO of ACB/Vigilance is hereby directed to deal with the same in accordance with law.

With this directions appeal proceedings stands closed.

Notify the parties.

Pronounced in the open court.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Sd/-

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