

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No.130/2019/SCIC

Shri Uday A. C. Priolkar,
R/o Hno. C5/55,
Mala Panaji Goa.

..... Appellant

V/s

1) The Public Information Officer/
The Dy. Superintendent of Police,
(Anti Narcotic Cell),
Panaji- Goa.

2) The First Appellate Authority/
Dy. Superintendent of Police,
(Anti Narcotic Cell),
Panaji- Goa.

..... Respondents

Filed on: 18/04/2019

Disposed on: 16/08/2019

1) FACTS IN BRIEF:

- a) The appellant herein by his application, dated 21/01/2019 filed u/s 6(1) of The Right to Information Act 2005(Act) sought certain information from the Respondent No.1, PIO under eight points therein. Out of the same the information at point (8) was transferred to PIO, SDPO, Mapusa u/s 6(3) and according to appellant information thereon is received.
- b) In respect of the remaining seven points, the PIO herein replied on 29/01/2019, rejecting the requested information on the ground that the respondent Authority is exempted from disclosure of information u/s 24(4) of the act.

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- c) Being aggrieved by said response the appellant filed first appeal to First Appellate Authority (FAA). FAA by order, dated 30/03/2019 dismissed the said appeal interalia holding that the Anti Narcotics Cell of Goa Police is exempted from disclosing information u/s 24(4) of the act.
- 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 and FAA filed their replies to the appeal on 26/06/2019.
- f) The appellant appeared in person and the PIO was represented by Shri Sitakant Nayak, P.I. Submissions of the parties were heard.
- g) It is the contention of appellant that though the act grants exemption to certain authorities, such exemption does not extend to the cases involving corruption and Human Rights violation. According to him the information sought is related to corruption and hence such exemption is not applicable with respect to the application filed by him.

In support of his contention the appellant has relied upon the judgment passed by Hon'ble Supreme Court in the case of *Yashwant Sinha & others V/s Central Bureau of Investigation (Review petition Criminal) No.46 of 2019 in Writ Petition (Criminal) No.298 of 2018 as also in the case of Chief Information Commissioner and another V/s State of Manipur and another 2012 (2) Goa L.R. 105 (SC)* and submitted that the same are applicable in the present case being identical.

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h) Shri Sitakant Nayak, PI representing PIO submitted that as per notification dated 30/01/2009, of the Department of Information and Publicity, Anti Narcotic Cell of Goa Police Department, which is the respondent authority herein, has been exempted from disclosing the information for the purpose of sub section (4) of Section (24) of the Act and hence information cannot be given. He has filed on record copy of the said notification. According to him the anti Narcotic Cell books the cases under NDPS Act on the bases of prior intimation which includes secret strategies and incase information is disclosed, there is a threat to the security.

It is his further contention that on his same plea the FAA after issuing notice to the appellant and hearing him, dismissed the first appeal.

2) FINDINGS

a) Perused the records and considered the submissions of the parties. The sole point to be decided herein is whether the information as sought is exempted from disclosure u/s 24(4) of the act read with notification dated 30/01/2009 issued by Directorate of Information & Publicity:

b) Section 24(4) of the Act reads:

24. Act not to apply to certain organizations.(1) -----

(2)-----

(3) -----

(4) *Nothing contained in this Act shall*

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apply to such intelligence and security organization being organizations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

5)-----

- c) Careful analysis of the above provision would reveal that though the intelligence, Security organization or notified authorities are exempted from the applicability of the act, such exemption is not extended to disclosure of information pertaining to allegations of corruption and human rights violation. In the case of *Chief Information Commissioner and another v/s state of Manipur and another (Supra)* as relied upon by the appellant, the

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Hon'ble Apex Court while dealing with the extent of notification u/s 24(4) issued by State Government, exempting the concerned organization from the purview of the Act, has held firstly that such exemptions cannot have retrospective effect and Secondly that the exemptions cannot apply to information pertaining to allegations of corruption and human right violation.

- d) A similar view is taken by the Division bench of High Court of Madras in the case of ***The Superintendent of Police Central range office of Directorate of Vigilance and anti corruption Chennai-600028 V/s R. Karthikeyan and others (W.P.Nos.23507 and 23508 of 2009 and M.P. Nos 1 and 1 of 2009)***. It is held therein that exemption as contained in section 24(4) of the act does not extend to information relating to allegation of corruption. In para (14) of the said judgment it observed:

*“14. Therefore, notwithstanding the exemption obtained by the petitioner organisation, **any information relating to the allegations of corruption cannot be excluded from the purview of public access. The information sought for by the first respondent are wholly statistical information regarding the number of cases filed, their success rate and the post conviction or post trial action taken against such officers. These information are vital in a transparency Government as public are entitled to know the officers who are facing charge of corruption as well as conviction or acquittal obtained by them as well as the result of departmental action***

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initiated by the Government. Perhaps, consequent to proviso to Section 24(4), in paragraph 11 the division bench has specifically referred to the proviso and held that the first proviso will take care of apprehension expressed by the petitioner in that case. The section cannot be used to exclude the information of allegation of corruption.”(emphasis supplied).

- e) Aforesaid judgment in the case of *R. Karthikeyan (supra)* is also followed by High Court of Madras in the subsequent case of ***The Superintendent of Police Central range, v/s M. Kannappan and another (W.P.805 of 2012)***.
- f) Considering the ratio laid down in the cases of State of Manipur (Supra) and those of A. Katikeyan and M. Kannapan (Supra) it can be gathered that though section 24(4) of the act grants exemption to the respondent Authority, such exemption is not in the nature of immunity to the authority itself from applicability of the act. The exemption is only in respect of information, other than relating to corruption and human rights violation. In other words, notwithstanding the exemption, information relating to corruption and violation of human rights as held by such authorities is liable for disclosure.
- g) In context of the present case, it is now necessary to find out the nature of information sought herein and whether it pertains to corruption and/or human rights violation for bringing the same beyond the shield of immunity.

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h) By the appellant's application u/s 6(1) of the act, he has sought information on following points:

- 1) *Cases of NDPS have been registered from the year 2010 till 2019 **and** who are their investigating officers.*
- 2) *The panchanama copies of NPDS cases from the 2010 till 2019.*
- 3) *Amount or reward has been received by the investigating officer for conducting NDPS cases **and** kindly provide the list of officers in which matters they have received any reward for conducting any investigation.*
- 4) *Drug detection kits have been brought, purchased and used by this office from the year 2010 till 2019.*
- 5) *Names of the drug detection kits and when the same has been bought and when the same expires which are in possession of the ANCPS.*
- 6) *Drug detection kit has been serviced and provide the details of the same.*
- 7) *Amount have been paid or reimbursed to the witnesses for cases of NDPS have been registered from the year 2010 till 2019.*
- 8) *Copies of the FIR registered at Mapusa Police station for the date January 2018 to November 2018.*

Out of the above, the information to point (8) is furnished and hence does not require any further consideration herein.

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- i) Regarding information sought at **points (1) and (3)** it can be seen that the first part of such information refers only to the statistical details as held by the department. However the disclosure of second part of said points (1) and (3) which seeks the names of investigation officers and the list of officers who have received awards for conducting investigation, to my mind may involve the aspect of safety and security.
- j) Coming to **point (2)** of the application, which are copies of panchanama relates to the investigation part of the respondent Authority and would require maintenance of secrecy. The same does not relate to any corruption but to investigation.
- k) Coming to the information sought at **points (4),(5) and (7)** is purely in the form of calling of the statistics or data. Such information relates to corruption. Such information if disclosed cannot not be held to lead to any security threat. On the contrary the said statistics relates to the budgetary resources of respondent authority. Which are required to be disclosed for achieving transparency.
- l) The nature of information sought at **point (6)** is vague. From its wording one cannot know as to what is the actual information required i.e. whether it is the details of service or any other details.
- m) In yet another case before the High court of Calcutta, in the *Writ Petition no.121 of 2009,Basudeb Batabyal V/S Central Information Commission and others and in Writ Petition no.310 of 2009 ,The commissioner of Customs(Port) V/S The information Commissioner, Central Information Commission and others* disposed by a common order, by

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upholding the order of the commission directing disclosure of the details regarding compensation and rewards court has observed:

*“ The Central Information Commission was of the view that there was no security risk involved in disclosing the information sought nor would it have compromised the petitioner in WP No.121 of 2009. **The Commission held that barring disclosure of information relating to the compensation or reward for outstanding work received by an officer serving a public authority would amount to negating the effect of the said Act of 2005. The Commission opined that since compensation and reward related information concerned the budgetary resources of public authorities, they should be liable for disclosure. The appeal was disposed of by holding that there was no ground to refuse to furnish the requested information.** The Commission did not distinguish the two requests made by the petitioner: the **first** being the quantum of reward and the **second** being the furnishing of the corresponding files/ case numbers. **As to the quantum of reward, the reasoning contained in the Commission’s order would justify the disclosure thereof. However, the files and case numbers relating to the work of a member of the Special Investigation Branch of the Customs authorities could not have been directed to be released following a request under the Right to Information***

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Act, inter alia, by virtue of section 24 and the second to the Act and the provisions of section 8(1)(g) and 8(1)(j) thereof.

.....
.....
*W.P. No. 121 of 2009 and W.P. No. 310 of 2009 are disposed of by modifying the order of the Central Information Commission passed on December 31, 2008 and **by directing the Customs department and the petitioner in W.P. No. 310 of 2009 to only furnish to the second respondent the information relating to the quantum of reward given to the petitioner in W.P. No. 121 of 2009 during the period that the petitioner in W.P. No. 121 of 2009 was posted in the Special Investigation Branch of Calcutta Customs.***” (emphasis supplied)

n) Considering the nature of information sought and as discussed at paras 2(i),(j),(k), and (l) above, the information sought at points (4), (5) (7) and first part of points (1) and (3) of appellant’s application u/s 6(1) does relate to corruption and hence are subject to public scrutiny. The information to parts of said points is required to be furnished.

The information at point (2) and second part of point (1) and (3) being related to the investigation of cases and if disclosed, may result in invasion on security and safety.

The request for information at point (6) being vague cannot be considered unless clarified.

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o) In the back drop of the above facts, and the law and considering the extent of exemption granted to the respondent authority under section 24(4) of the act, as laid down by the Hon'ble Supreme Court and High Court of Madras and the High Court of Calcutta, as discussed above, I find that the information sought at points (4), (5) (7) and first part of points (1) and (3) of appellant's application, dated 21/1/2019 is required to be furnished. However the information to points (2) parts of points (1) and (3) and that at point (6) is not liable to be furnished. I therefore proceed to dispose the present appeal with the following:

O R D E R

The appeal is partly allowed. The order, dated 30/03/2019 passed First Appellate Authority in 1st appeal No.1 of 2019 is set aside. The PIO is directed to furnish to the appellant, within **FIFTEEN DAYS** from the date of receipt of this order by it, the following information, with reference to his application dated 21/01/2019 viz.

- 1) Number of Cases of NDPS have been registered from the year 2010 till date of application.**
- 2) Amount or reward received by the investigating officer for conducting NDPS cases.**
- 3) Number of Drug detection kits purchased and used from the year 2010 till the date of application.**

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- 4) **Names of the drug detection kits in possession of the ANCPS, date of its purchase and date of its expiry.**
- 5) **Amount paid or reimbursed to the witnesses for cases of NDPS registered from the year 2010 till 2019.**

Considering the facts and circumstances of the case, I find no grounds to invoke the rights of this Commission u/s 20(1) and/or 20(2) or u/s 19(8) (b) of the act and hence said prayers stands rejected.

Order be communicated to the parties alongwith copy of this order.

Proceeding closed.

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(Shri. P. S.P. Tendolkar)

Chief Information Commissioner
Goa State Information Commission
Panaji –Goa

