

# GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

---

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

**Appeal No.93/2019/CIC**

Shri Rahul Basu,  
D3 &4, Bay View 204,  
Nagalli Hills, Street 3, Lane 1,  
Dona Paula Goa, 4034004 ..... **Appellant**

**V/s**

- 1) The Public Information Officer,  
Directorate of Mines & Geology  
Panaji Goa.
- 2) The First Appellate Authority,  
Directorate of Mines & Geology,  
Patto, Panaji Goa.. ..... **Respondents.**

**Filed On: 11/04/2019**  
**Disposed On: 01/08/2019**

**1) FACTS IN BRIEF:**

- a) The appellant herein by his application, dated 14/01/2019 filed u/s 6(1) of The Right to information Act 2005 (Act for short) sought information from the respondent no.1, PIO regarding Software based on a MOU between Directorate of Mines & Geology (DMG) and Megasoft systems operation and logistics for transportation of minerals for the State Goa.
- b) The said application was not responded by the PIO till 19/02/2019 on which date deeming the same as refusal appellant filed first appeal to the respondent no.2, being the First Appellant Authority (FAA).
- c) Subsequently on 25/03/2019, the appellant received a reply from PIO that the information cannot be provided under section 8(d) of the act. It appears that the same

Sd/-

...2/-

was refused taking shelter of exemption u/s 8(1)d of the act, but wrongly typed as "8(d)".

- d) The first appeal filed by appellant was disposed by FAA with a direction to furnish the information. In spite of the same information is not provided.
- e) The appellant has therefore landed before this commission in this second appeal u/s 19(3) of the act.
- f) Notices were issued to the parties, pursuant to which they appeared. The PIO on 29/05/2019 filed his reply to the appeal. On 28/06/2019 the PIO filed his affidavit in response of the application of the appellant. vide his said affidavit it is averred by PIO that information at point (a) and (b) is sensitive and commercial confidence information harming competitive position of third party and that at (c) to (h) includes permits issued by Directorate which includes commercial and trade secrets or intellectual property which would also harm competitive position of third party and does not involve larger public interest. Arguments of the parties were heard. Appellant was represented by Adv. A. Gode and PIO and FAA appeared in person.
- g) In respect of points (a) and (b) of the application, it is the proposition of the appellant that the information is sought with reference to MOU dated 22/09/2017. Section I of annexure I of the said MOU dated 22/09/2017 requires the creation of master consisting of several modules given therein. The masters are essentially the broad framework of the software which provide parameters for monitoring mining activity in the state of Goa and provide checks and balances to prevent

Sd/-

...3/-

any form of illegal Mining or Transportation. According to appellant DMG is responsible for ensuring that the masters and parameters are maintained as per the requirements of the law and hence, there can be no intellectual property rights or commercial confidentiality associated with the masters or parameters and that disclosure of this information cannot harm the competitive position of any company being in public interest.

Regarding points (c) to (h) of the application it is the contention of appellant that the permits are official documents authorizing certain activities to be carried out and thus are documents of public record and hence no privacy or intellectual property right or commercial confidence arises.

In respect of point (i) of application section VIII of annexure I of the MOU provides for exemption from weighment for inter-lease transportation of material and such exemptions are granted on case to case basis with the approval of DMG. Such documents are similar to permits and are documents of public record and there can be no intellectual property rights or commercial confidentiality associated with them.

By relying on the case of *Mardia Chemicals Limited v/s Union of India (2005) 4 SCC 31*, advocate for appellant submitted that public interest is always been held above the private interest

h) In his submissions PIO submitted that information sought by appellant at point (a) & (b) is information on module of ore accounting system (OAS) which is

Sd/-

...4/-

sensitive and commercial confidence information and will harm the competitive position of a third party. Hence information cannot be provided as per section 8(1)(d) of RTI Act.

According to him information at point (c) to (h) is information on all permit issued by this Directorate, which includes commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party and that such information does not reflect to larger public interest. Thus according to PIO its disclosure is also exempted u/s 8(1)(d) of the act.

**2) FINDINGS:**

a) I have perused the records and considered the rival contentions of the parties. In the course of hearing the appellant admitted having received the information at point (i) of the application dated 14/01/2019. Hence I proceed to deal with the exception as raised for disclosure of information at point (a) to (h). Considering the pleadings the sole point that is required to be decided by this commission is.

*“Whether the information at points (a) to (h) is exempted from disclosure u/s 8(d) of the act.”*

b) Section 8(1)(d) of the act, under which the PIO has claimed the exemption from disclosure, reads:

**8. Exemption from disclosure of information.** \_\_\_\_\_ (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,\_\_\_\_  
Sd/-

...5/-

- (a).....
- (b).....
- (c).....
- (d) *information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*

c) On analyzing the same, the ingredients involved are that the disclosure of such information should harm competitive position of third party including commercial confidence, trade secrets or intellectual property. However said exemption is not absolute. If the competent authority under the act is satisfied that a large public interest warrants the disclosure of such information same can be disclosed.

If one peruses the spirit of the act as is contained in the preamble, the disclosure of information shall be for the purpose of achieving transparency of information and containing corruption and to hold Government and its instrumentalities accountable to the public.

d) With the above legal position if one examines the request contained herein, it is seen that the appellant has referred to a MOU entered into between the respondent authority and third party viz. megasoft systems. Copy of the said MOU dated 22<sup>nd</sup> September 2017 is on record.

Sd/-

...6/-

Said MOU is entered with the intent of regulating activities pertaining to transport of minerals which are the public resources. In such circumstances the transaction entered between the respondent authority and third party and the records generated and held by it cannot be held as private or confidential and it does relate to a public activity viz. transport of public resources to be regulated by DMG.

- e) The second contention of the PIO is that disclosure of information as sought would effect commercial confidence, trade secrets of intellectual property. This plea has to be looked into in the light of the information as sought.

At point (a) to (h) the appellant has sought for the information, which in fact are the technical features of operations and logistics platform for transportation of minerals for State of Goa and the scope of work. The said third party i.e. megasoft is required to develop/provide software to the respondent authority with required specification for public purpose. The information sought is required to be created, maintained and used as detailed in said MOU and forms part of same.

- f) In the case of *M/s Shonkh Technology v/s State Information Commission (W.P.No.2912 of 2011)* the High Court of Bombay was dealing with disclosure of information regarding policy of government to adopt a technology to prevent tempering of vehicle

Sd/-

...7/-

registration books. In the said case before High Court the information was refused by PIO u/s 8(1)(d) under a plea that the contract between Government and the third party was confidential. In the second appeal filed to the commission filed by information seeker, PIO was directed to furnish the information. against said order of information commission, the third party filed a writ petition to Bombay High Court. While dismissing the writ petition and upholding order of State Information Commission, the Hon'ble High Court has held:

*“14) On the own showing of the Petitioner, clause (d) provides that the information can be disclosed if the competent authority is satisfied that larger public interest warrants such disclosure. Therefore, that clause, as admitted by Mr.Manohar is not absolute. **It does not say that the information including commercial confidence, trade secrets or intellectual property, the disclosure of which, would harm the competitive position of a third party; cannot be demanded or if demanded, cannot be disclosed even if larger public interest warrants the same.** The State Information Commissioner has held that the disclosure of both agreements would not result in disclosure of trade secrets or intellectual property. His conclusion is that the tenders were for an*

Sd/-

...8/-

important work which affects large number of vehicle owners and drivers of vehicles. The agreements have to be entered into for providing a service in the form of making of Smart Cards for registration of motor vehicles and driving licences at enhanced fees. Further, the conclusion is that the disclosure of information would enable public scrutiny of the process and contracts and therefore, it is desirable in larger public interest that the information is provided.

15) I am not in agreement with the Petitioners that the conclusion drawn is in any way contrary to [Section 8\(1\)\(d\)](#). The agreements may contain certain stipulations, so also, certain obligations, but what is sought is a copy of the agreement. It is not the case of the Petitioners that larger public interest does not warrant disclosure of this information. They tried to place the case more on the pedestal of security and safety, so also, confidentiality of interests of those to whom the Smart Cards have been issued. The information sought is not in relation to the individual Smart Cards or registration certificates or details thereof. **The information sought is in relation to the decision taken and the policy framed for providing the Smart Cards and if**

Sd/-

...9/-



**the means to provide the same are by inducting private service providers, then, only details of the agreements executed with such service providers and the copies thereof have been sought.** In my view, there was nothing in the information sought by the Respondent No.4, by which commercial confidence, trade secrets or intellectual property is being disclosed, leave alone the disclosure of which would harm the competitive position of a third party or it would lead to incitement of an offence. Merely because the details of the service providers are to be disclosed and the copies of the agreements would be provided, that does not mean that their interests are harmed or their competitive position is affected. It has been rightly pointed out by the Respondent No.4 that some other Transport Commissioners have been providing such details for the respective territories and States, therefore, there was no need for the Transport Commissionerate for Maharashtra to withhold this information. In these circumstances, it cannot be said that the reasons given by the State Information Commissioner are in any way

Sd/-

...10/-

*violative of the provisions pressed into service. I am of the opinion that the State Information Commissioner has acted in consonance with the object and purpose of the [RTI Act](#) and upholding the same, has rightly directed the authorities to provide the information sought by the Respondent No.4. His order cannot be said to be vitiated by any error of law or perversity so as to call for interference in writ jurisdiction.(emphasis supplied)*

- g) In yet another case of *Ms. V. V. Minerals v/s The Director of Geology & Mining and others W. P. (MD) NO.5427 of 2007*. While dealing with the scope of exemption u/s 8(1)(d) the High Court of Madras has observed there in at para (11) and (12) as under.

*“11) Therefore, the principal contention that a right accrues to the petitioner to object may be correct in the context if a document is exclusively submitted by any person to the Government authorities such as property statements, income tax returns etc., **but in a case of lease deeds and transport permits which emanate from the statutory authorities and where the petitioner cannot be said to be in exclusive possession, he cannot have a right to object to its being divulged as a third party. The lease deeds pertaining to minerals as well as transport permits are***

Sd/-

...11/-

**not documents prepared or to be kept by a prospecting mine operator but prospecting a mine or mineral is a privilege conferred by the State to the individuals, who accepts the norms prescribed under Mines and Minerals Act 1957 and the rules framed thereunder.**

12) In the present case, when the third respondent as an Information Officer, ordering notice to the petitioner and taking their objection and refusing to furnish the documents sought for by a citizen is clearly beyond the scope of the RTI Act. **If the information is available with the State and such information is in exclusive custody of the State, the question of seeking any opinion from the third party on such issues may not arise, especially, when they are public documents.** By disclosure of such information, no privilege or business interests of the petitioner are affected. On the other hand, such a disclosure may help any party to act upon those documents and take appropriate steps.”(emphasis supplied)

h) While dealing with the extent of public interest over private interest the Hon’ble Supreme Court in the case of Mardia Chemicals Ltd. (supra) has held:

“.....it may be observed that though the transaction may have a character of a private contract yet the question of great

Sd/-

...12/-

*importance behind such transactions as a whole having far reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions more particularly when financing is through banks and financial institutions utilizing the money of the people in general namely, the depositors in the banks and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio-economic drive of the country.....”*

- i) Coming to the case in hand, undisputedly the information sought is from the custody of a public authority i.e. DMG. The same also pertains to a public policy regarding the regulatory measures adopted by the government. The information thus cannot be treated as personal or private. Such information also

Sd/-

...13/-

does not involve any commercial confidence or intellectual property as the same is created for the use of a public authority and held by such public authority. Considering the nature of information sought its disclosure would enable the public scrutiny regarding the process and implementation of MOU. Thus in larger public interest it is necessary that the same is disclosed.

- j) In the above facts and circumstances I hold that the information sought at points (a) to (h) of the applicant's application dated 14/01/2019, cannot enjoy immunity from its disclosure u/s 8(1)(d) of the act. I therefore find merits in the appeal. Hence I proceed to dispose the same by the following:

**O R D E R**

The appeal is allowed. The PIO is hereby directed to furnish to the appellant the information sought by him at points (a) to (h) of his application dated 14/01/2019. Said information shall be furnished free of cost within **Ten (10) days** from the date of receipt of this order.

As I find no deliberate and intentional denial of information by PIO, I find no grounds to invoke any rights either u/s 20(1) and/or 20(2) of the act. Proceedings thus stands closed.

Order be communicated to parties.

Sd/-

**(Shri. P. S.P. Tendolkar)**

Chief Information Commissioner  
Goa State Information Commission  
Panaji -Goa