

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

CORAM: Shri Juino De Souza: State Information Commissioner

Appeal No: 06/2020/SIC-II

Adv. Aires Rodrigues
C/G2, Shopping Complex,
Ribandar Retreal,
Ribandar Goa.
403 006.

... Appellant

v/s

1. First Appellate Authority,
Mr.Pankaj Kumar Singh
Suptd. of Police(Crime),
Ribandar-Goa.
- 2.Public Information Officer,
Mr. Mahesh K. Gaonkar,
Dy. Suptd. of Police,
Crime Branch, Ribandar-Goa.
- 3.Assistant Public Information Officer
Mr. Jivba Dalvi, Police Inspector
Crime Branch,
Ribandar-Goa.

.... Respondents

Relevant emerging dates:

Date of Hearing : 22-01-2020

Date of Decision: 22-01-2020

ORDER

1. **Brief facts of the case** are that the Appellant vide an RTI application dated on 16/10/2019 addressed to the PIO, Office of the Director General of Police, Panaji sought information at three points under section 6(1) of the RTI act 2005.
2. The Appellant is seeking information of (1) No of complaints received by the Goa Police from 2005 to date against person allegedly holding dual nationality. (2) a list of person against whom the above mentioned complaints have been filed alongwith the name of the Complainants and date of Complaint and (3) Current status of each of the above complaints received.

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3. It is seen that the PIO, Office of the Director of General of Police, Panaji vide his letter No.OS/ADMN/RTI-269/1948/2019 dated 18/10/2019 has transferred the RTI application under Section 6(3) of the RTI Act to ten other PIOs namely (1) the PIO/Chief Electoral Officer (Goa), Near Traffic Cell, Altinho, Panaji-Goa, (2) PIO/DYSP Crime, Ribandar, (3) PIO/SDPO, Panaji, (4) PIO/SDPO, Porvorim (5) PIO/SDPO, Mapusa (6) PIO/SDPO, Bicholim (7) PIO/SDPO, Ponda (8) PIO/SDPO, Margao, (9) PIO/SDPO, Vasco and (10) PIO/SDPO, Quepem.
4. It is the case of the Appellant that he has received information from all other 09 PIO's except the PIO Dy. Superintendent, Crime Branch Ribandar who in his reply No.DYSP/CB/RTI.Pet-76-19/1506/2019 dated 07/11/2019 informed the Appellant in all three points as follows: As per the information supplied by APIO, Shri. Jivba G Dalvi, the information sought cannot be furnished as you being foreign national and only Citizen of India can seek information under section 3 of the RTI Act. 2005.
5. Not satisfied with the reply furnished by the PIO, the Appellant filed a First Appeal on 12/11/2019 and the First Appellate Authority (FAA) vide his Order dated 16/12/2019 upheld the reply of the PIO and dismissed the First Appeal under section 3 of the RTI Act.
6. The FAA in his Order has *inter alia* observed that "In this regard it was explained in detail by the PIO and APIO informed that as per the Investigation Officer Mr.Satish Gawade in Old Goa PS. C R No.12/2016 that during the course of investigation in to the aforesaid case, it is revealed that the case Appellant is a Portuguese National having Portuguese Passport No.H.206509 issued on 11/02/2005 date of expiry on 11/02/2015 issued at G.CIVIL DE LISBOA. On the above strength of above Portuguese Passport, the appellant has arrived in India. Accordingly, a charge sheet has been filed in the Hon'ble Court of JMFC, Panaji.....

..... and thus "I agree with the reason given by the Respondent No.1 that the Appellant is not entitled to the information under section 3 of the RTI Act."

7. Being aggrieved with the Order of First Appellate Authority (FAA), the Appellant thereafter filed a Second Appeal registered with the commission on 26/12/2019 and has prayed to directed the Respondent PIO to furnish information as sought for in the RTI application dated 15/10/2019 and for imposing penalty and other such reliefs.
8. **HEARING:** During the hearing Appellant Adv. Aires Rodrigues is present in person. The Respondent PIO, Mr. Mahesh K. Gaonkar, Dy. Suptd. of Police, Crime Branch, Ribandar is present alongwith APIO, Mr. Jivba Dalvi Police Inspector, Crime Branch, Ribandar Goa. The FAA is absent. This matter by consent is taken up for final disposal.
9. **SUBMISSION:** At the outset the Appellant submits that the reply of the PIO dated 07/11/2019 is not maintainable as he is an Indian national. The Appellant states that he was born in Goa before liberation and is a permanent resident of Goa and produces documents in support of his claim viz Voters Card bearing no FF26904031, Aadhaar Card bearing no 873953363572, Driving Licence No. GA0720060009508 and ID card issued by the Bar council of Maharashtra having no MAH/1802/2001 which are taken on record.
10. The Appellant further submits that police investigations do not prove that he is a foreign citizen. Adv. Aires Rodrigues vehemently argues that the First appellate authority (FAA) in his order has without application of mind upheld the explanation given by the PIO and APIO who wrongly presumed that he is a foreign national and denied information under RTI act 2005. Adv. Aires Rodrigues as such requests the Commission to quash and set aside the impugned Order of FAA and issue directions to the PIO to furnish the information as sought in the RTI application free of cost. The Appellant does not insist for penalty against the PIO.

11. The PIO, Mr. Mahesh K. Gaonkar submits that as the Crime Branch was investigating the matter pertaining to the foreign nationality of the Appellant and it is revealed that the Appellant is a Portuguese National having acquired a Portuguese Passport bearing No.H.206509 issued on 11/02/2005 and with date of expiry on 11/02/2015 issued at G.CIVIL DE LISBOA.
12. The PIO further submitted that on the strength of the above Portuguese Passport, the appellant has arrived in India and a chargesheet has been filed in the Hon'ble Court of JMFC, Panaji. The PIO finally submitted that as police investigations have established that the Appellant is a foreign national as such the information was denied because as per the provisions of the RTI Act 2005, only Indian Citizens are entitled to seek information in terms of section 3.
13. **FINDINGS:** The Commission has heard the submission of the respective parties and perused the material on record including the appeal memo, reply of the PIO and order of the FAA.
14. The Appellant in his appeal memo has *inter alia* stressed on the point that the right to information is an intrinsic part of the fundamental right to free speech and expression and guaranteed under article 19(1)(9) of the constitution,. The Appellant has also in para XXXVI of the appeal memo stated that there is no decision by the appropriate authority to hold that the Appellant is a Portuguese Citizen and the ground to refuse the information is a total ruse to justify an otherwise unjustifiable ground to wrongly denying information which is unsustainable.
15. The Commission finds that the FAA in his order has recorded that " The PIO/ Dy. SP, Crime Branch and APIO/ Police Inspector, Crime Branch, Ribandar stated that the appellant is not a citizen of India and as per section 3 of the RTI Act, 2005 and he cannot seek information".

16. **Point for Determination:** The point therefore for determination before the Commission is Whether the appellant is a Indian Citizen or a Foreign National and whether as such he is entitled or not entitled to seek information as per the RTI act 2005.?
17. No doubt, only Citizens of India have right to seek information as per section 3 of the RTI act 2005 and the PIO denied information as the crime branch was investigating the matter and as per documents obtained including Portuguese Passport bearing No.H.206509 it has come to light that the Appellant is a foreign national, however the Commission finds that nothing has been brought on record by the PIO to show that the appellant has renounced his Indian citizenship or has surrendered his Indian passport.
18. As per law it is mandatory for all persons who held an Indian Passport to renounce their Indian Citizenship upon acquiring any foreign nationality and obtain surrender of Indian Citizenship certificate, therefore police investigation that led to obtaining some documents showing details of Portuguese passport issued in the name of a person is not conclusive evidence as to the citizenship or nationality of that person.
19. The Police investigation of a passport at the most raises a presumption that the person has acquired foreign citizenship, but this presumption can be rebutted and opposed and the burden lies upon that person to prove that he is not a foreigner before the appropriate authority.
20. Even assuming that the Appellant had acquired Portuguese passport No. H206509 issued on 11/02/2005 and date of expiry on 11/02/2015 issued at G.CIVIL DE LISBOA and which is presumed to be genuine, such passport by itself does not extinguish the Appellant's (Shri Aires Rodrigues) Indian Citizenship.

21. The question of whether the appellant had given up his citizenship of this country and acquired that of a foreign country can be tried and decided by the Central government who is the Competent Authority by virtue of Section 9 of the Citizenship Act and Rule 30 of the Citizenship Rules framed under the Act. The PIO therefore has no locus standi to venture into the question of the appellant's citizenship and to deny furnishing the information under the RTI act.
22. The Appellant in the course of his arguments has submitted that he was born in Goa before liberation and is a permanent resident of Goa. The appellant has produced several documents in support of his claim including aadhar card, voters card, driving license and Identity Card issued by the Bar Council of Maharashtra and Goa (showing that the appellant is an Advocate).
23. The appellant in his appeal memo has stated that he is Indian National and an Advocate by profession and has for four decades espoused various social causes for which information under RTI has been obtained from various authorities. It is a fact the appellant has filed several RTI applications and information has been provided by the PIO's who have never questioned the Appellant's Indian citizenship.
24. **DECISION:** In view of the foregoing discussions, the Commission comes to the conclusion and reaches to the decision that until such time it is decided and established by the Competent Authority and or the appropriate forum including a competent court of law that the appellant has acquired citizenship of a foreign country including Portuguese Citizenship and consequently has given up and terminated the Citizenship of India, the Appellant, Shri Aires Rodrigues continues to remain an Indian Citizen for all practical purposes and is thus is entitled to seek information in terms of section 3 of the RTI act 2005 by filing an RTI application as per section 6(1) and there is no impediment on the part of the PIO to furnish information as sought by the Appellant in his RTI application. ...7

Consequently, the order of the FAA dated 16/12/2019 is hereby quashed and set aside.

25. The Commission directs the PIO, Office of Supdt. Of Police, Crime Branch, Ribandar-Goa to furnish the information free of cost by hand delivery to the appellant under acknowledgement within 15 working days from the date of receipt of the order. The PIO shall intimate the Appellant after the information is ready so as to enable the appellant to come and collect the same in person. The PIO to file a compliance report by enclosing a copy of one set of all documents that are furnished to the Appellant for record of the Commission.

With these directions the Appeal case stand disposed.

All proceedings in the appeal case also stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

**Sd/-
(Juino De Souza)
State Information Commissioner**