

GOA STATE INFORMATION COMMISSION

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Appeal No.170/2020/

Shri Pedrito Misquitta Alias
Shri John Peter Misquitta,
Souza Vaddo, Candolim,
Bardez Goa 403515.

.....Appellant

V/S

1. State Public Information Officer,
O/o. the Directorate of Vigilance,
Panjim- Goa 403001.

2. First Appellate Authority,
Directorate of Vigilance,
Panjim Goa 403001.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 16/10/2020

Decided on: 09/08/2021

FACTS IN BRIEF

1. Appellant vide his application dated 16/12/2019 sought information from Point No. 1 to 4 mentioned therein under sec 6(1) of Right to Information Act 2005 (Act), from PIO, Directorate of Vigilance, Panaji Goa.
2. The information inter alia pertains to the Complaint lodged by him vide letter dated 22/11/2019 in the office of the Director, Directorate of Vigilance.
3. It is contention of the Appellant that he received reply from Respondent No. 1, PIO herein on 13/01/2020, providing information for Point No. 1 to 3, However PIO refused to furnish the information for Point No. 4 stating that matter is under

inquiry/examination, hence the information cannot be spared at this stage in view of sec 8(1)(h) of the RTI Act, as it will impede the process of the investigation.

4. It is contention of Appellant that not satisfied by the said response, he filed appeal before First Appellate Authority (FAA) on 26/02/2020 by way of First Appeal.

The FAA by its order dated 15/07/2020 allowed said appeal by overruling the stand taken by PIO on the ground that, since the Appellant himself being the complainant, he is entitled for information, related to his complaint and as such providing information to Appellant would not in any way impede the process of information. FAA also directed the PIO to provide the copy of report dated 10/10/2019 received from Collector North to Appellant within 15 days from the date of order.

5. According to Appellant, order passed by FAA dated 15/07/2020 is erroneous, confusing, and therefore he preferred review petition before same authority i.e. FAA on 29/07/2020, wherein Appellant was informed that, there is no provision under RTI Act for review of the order.

Therefore Appellant landed before this Commission in this Second Appeal under sec 19(3) of RTI Act.

6. Notices were issued to the parties, pursuant to which the PIO appeared and filed her reply on 22/03/2021. In her reply, she submitted that Appellant was furnished information with respect to information at Point No. 1,2 and 3 and with respect to information at Point No. 4 she denied the information under sec 8(1)(h) of RTI Act, as it will impede the process of investigation.

She also submits that she has complied with the directions of FAA and provided the copy of report dated 10/10/2019 received from the Collector, North.

7. I have perused the records and considered the submission of parties. It is admitted fact that, information at Point No. 1,2 and 3 have been furnished to the Appellant, the only dispute remain herein is with respect of the information at Point No. 4, which is rejected by PIO and not fully considered by First Appellate Authority while deciding the First Appeal.
8. On verification of the application dated 16/12/2019, the information at Point No. 4 sought by the Appellant is as under:

"4. I would like to know whether there is any letter/communication from any source on record of DOV, wherein it shows that on 29/11/2017, partly demolition was carried out by Demolition Squad either in survey no. 44/2 or survey no. 44/2-A of village Candolim, Taluka Bardez. In case YES, I require copy or copies of the same".

Considering the Point No. 4 above, what is allowed by the FAA by its order dated 15/07/2020 is not consistent and justified and needs intervention.

9. Records shows that by complying with direction of FAA, the report of the Collector North has been supplied by the PIO and collected by Appellant. The corollary is that after collecting the evidence Inquiry Report is prepared and furnished to the office of Directorate of Vigilance by Collector North, Goa, after furnishing of Inquiry report no further investigation exist, what remains is only inquiry on the charges, to be followed by Penalty, if charges are proved.

Now the information remains to be furnished is the correspondence / communication in the records of Directorate of Vigilance regarding the demolition of structure, as on 29/11/2017.

10. Sec 8(1)(h) of the RTI Act does not provide a blanket exemption in refusing the information. The onus lies on the Public Authority to show that, disclosure of information is likely to impede the process of inquiry.

11. **Sec 19(5) of the RTI Act reads as under:**

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

12. Above provision of law has been upheld by Hon'ble High Court of Delhi in case **State Bank of India v/s Mohd. Shahjahan** (in W.P. No. 9810/2009) at Para No. 22 has observed:

"22. The very object and purpose of the RTI Act is to make the working of Public Authorities transparent and accountable for the purpose of RTI Act all information held by a Public Authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the Public Authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed. The burden therefore is entirely on the Public Authority to show why the information sought from it should not be disclosed."

In the light of above ratio of the Hon'ble High Court, it is necessary to show how the disclosure of information is likely to impede the process of investigation. The impediment must be actual and not only camouflage to deny the information.

13. The Authority withholding the information must show satisfactory reason if not at the stage of reply to the application, atleast at the stage of FAA or before the Commission as to how the release of such information would impede the investigation process. Merely because the report is received and same is under inquiry and examination and is continuing, on this count alone the information cannot be denied not atleast to the original Complainant.

In **B.S. Mathur v/s Public Information Officer of Delhi High Court (W.P.(c)) No. 295/2011**, while dealing with the case of refusal of information u/s 8(1)(h) of RTI 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.

14. In the present case, incident has occurred on 29/11/2017 and 11/01/2018, as per records the inquiry report received from the Collector North Goa is in Dec 2019, examination of the said report is going on since 2019 onwards. The inquiry has attained its logical conclusion at a certain point and cannot be continued indefinitely. And on this pretext, the information cannot be denied. Also at what stage, the inquiry is pending is also not brought on record by the PIO.

15. While deciding the First Appeal, the FAA has rightly formed his opinion that Appellant being the complainant he is entitled to know the status of his complaint however has stopped at in giving a clear direction with respect to information sought.

16. In view of the above discussion, I hold that, the information as sought by the Appellant has to be furnished to Appellant as PIO failed to give satisfactory reason as to how the disclosure of such information would impede the process of investigation.

17. With the above findings. I dispose the present appeal with the following order.

O R D E R

The appeal is allowed.

The PIO is directed to furnish to the Appellant the information as sought by him at Point No. 4 of his application dated 16/12/2019, free of cost, within fifteen days from the date of receipt of this order.

Proceedings closed.

Pronounced in the open court.

Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner