

**GOA STATE INFORMATION COMMISSION**

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**Appeal No. 198/2020**

Dr. Gajanan S. Gawde,  
R/o. H.No. 414, Gurkhem,  
Dharbandora-Goa. 403406.

.....Appellant

V/S

1. Public Information Officer,  
The Deputy Conservator of Forests,  
North Goa Division,  
Ponda-Goa. 403401.

2. First Appellate Authority,  
The Conservator of Forests,  
Forests Department,  
Altinho, Panaji-Goa.

.....Respondents

**Shri. Vishwas R. Satarkar**

State Chief Information Commissioner

**Filed on: 24/11/2020**

**Decided on: 19/05/2022**

**FACTS IN BRIEF**

1. The Appellant, Dr. Gajanan S. Gawde, R/o. H.No. 414, Gurkhem, Dharbandora-Goa by his application dated 29/07/2020, filed under sec 6(1) of Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO) , the Deputy Conservator of Forests, North Division at Ponda-Goa.
2. The said application was responded by the PIO on 08/09/2020 providing part information and information with regards to point No. 5 and 17 was denied being third party information.
3. Not satisfied with the reply of the PIO, the Appellant filed first appeal under section 19(1) of the Act before the Conservator of Forest, Altinho, Panaji-Goa being the First Appellate Authority (FAA).
4. The FAA by its order upheld the reply of the PIO and dismissed the first appeal on 05/10/2020.

5. Being aggrieved with the order of FAA, the Appellant landed before the Commission with this second appeal under section 19(3) of the Act and with prayer to direct the PIO to furnish the information pertaining to point No. 5 and 17 and to award compensation for the hardship caused to him.
6. Notice was issued to the parties, pursuant to which PIO, Shri. Anant Samant appeared and filed his reply on 31/03/2021, and then PIO Mr. Anisha Kalkoor appeared on behalf of FAA and placed on record the reply dated 31/03/2021.
7. According to Appellant, the office of the Deputy Conservator of Forests, North Goa Division at Ponda vide order No. DCFN/CLM-20/2019-20/02 dated 28/04/2020 granted permission to Smt. Sunita Gopal Vaze to fell 23 numbers of trees from the property known as 'Gurkhem' in survey No. 14/3 of Dharbandora village situated at Dharbandora, Goa. Through his RTI application he sought information from the public authority with regards to permission order and detailed of documents submitted by the applicant to obtain the said permission. However the PIO denied to furnish the partial information on the pretext that third party objected to disclose the information.

Further according to the Appellant, the information pertaining to serial No. 5 and 17 should have been provided to him since it comes under public domain.

8. On the other side, the PIO contended that, upon receipt of the application for felling the trees from Smt. Sunita Gopal Vaze and upon perusing the documents submitted by her, the permission order was granted under The Preservation of Trees Act, 1984, on 28/04/2020.

He further contended that upon receipt of the RTI application from the Appellant on 29/07/2020, vide letter

No. 7/DCFN/RTIA-49/2020/141/802 dated 08/09/2020 he provided all the information to the Appellant. With regards to information at serial No. 5 and 17 being related to third party namely Smt. Sunita Vaze, the consent of the third party was sought as per section 11 of the Act. Since the third party objected to disclose the information by letter dated 31/08/2020, he rejected the request of the Appellant and to substantiate his case he produced on record the letter issued to third party dated 24/08/2020 and objection letter received from third party dated 31/08/2020.

9. Perused the pleadings, replies, rejoinder and considered the written and oral arguments of the rival parties and judgement relied upon by them.
10. On perusal of the RTI reply filed by PIO dated 08/09/2020, it is revealed that the PIO has furnished the information on point No. 2,4,6,7,9,12,13,14,15 and 16, the information with regards to point No. 1, 3, 8, 10 and 11 replied as information not available and information with regards to point No. 5 and 17 replied as "Smt. Sunita Gopal Vaze has objected to provide the third party documents".
11. Considering the rival contention of the parties, it is relevant to deal with section 11 of the Act, which reads as under:-

*"11. **Third party information.**\_\_\_\_ (1) Where a Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been **treated as confidential by that third party**, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from*

*the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

*Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party."*

Bare reading of the above provision of law, it reveals that section 11 of the Act is a procedural section and not exemption section. This provision prescribes the procedure to be followed when a PIO is required to divulge the information of third party. The PIO is under obligation to give written notice to such third party and third party shall within 10 days, make a representation against the proposed disclosure before the PIO and the PIO after receipt of the submission, take the decision keeping the view of the third party.

The another important aspect which the PIO has to evaluate is whether information objected to be disclosed by the third party has been treated as 'confidential' and whether any public interest gets involved with disclosure of information as also the possible harm or injury that would cause to the third party in disclosing the information.

12. On perusal of the objection filed by the third party dated 31/08/2020, there is not a whisper about the 'confidentiality' of information, therefore the purported information which is a matter of challenge has not been treated as 'confidential information' by the third party while submitting to public authority. Under the above provision of Act, it is mandatory that such information should be treated as 'confidential' by the third party.

The above fact is fortified by the High Court of Delhi in the case of **Arvind Kejriwal v/s Central Information Officer & Anrs (LPA. 719/2010)** in which it was held that:-

*"13. what is stipulated by [Section 11\(1\)](#) is that when an information seeker files an application which relates to or has been supplied by third party, the PIO has to examine whether the said information is treated as confidential or can be treated as confidential by the third party. If the answer is in the possible sphere of affirmative or "may be yes", then the procedure prescribed in [Section 11](#) has to be followed for determining whether the larger public interest requires such disclosure. When information per se or ex facie cannot be regarded as confidential, then the procedure under [section 11](#) is not to be followed. All information relating to or furnished by a third party need not be confidential for various reasons including the factum that it is already in public domain or in circulation, right of third party is not affected or by law is required to be disclosed etc....."*

*16. Thus, [Section 11\(1\)](#) postulates two circumstances when the procedure has to be followed. Firstly when the information relates to a third party and can be prima facie regarded as confidential as it affects the*

*right of privacy of the third party. The second situation is when information is provided and given by a third party to a public authority and prima facie the third party who has provided information has treated and regarded the said information as confidential. The procedure given in [Section 11\(1\)](#) applies to both cases.”*

In the present case, the PIO accepts the third party's objection mechanically and refused to furnish the information outrightly. Section 11 of the Act does not give a third party an unrestricted veto to refuse disclosing information. It only gives the third party an opportunity to voice its objection for disclosing the information. Therefore the reasoning given by the PIO in refusing to disclose the information is fallacious and not tenable in the eyes of law.

13. From the content of appeal memo and the prayer clause, it indicates that the controversy remains only with respect to information with regards to point No. 5 and 17 of the RTI application which reads as under:-

***5.** Provide certified copy of all property/occupancy documents enclosed with form B by the Smt. Sunita Vaze to obtain permission order No. DCFN/CLM-20/2019-20/02 dated 28/04/2020.*

***17.** Provide certified copy of any documents enclosed with the original application to obtain permission order No. DCFN/CLM-20/2019-20/02 dated 28/04/2020 by the Smt. Sunita Gopal Vaze.”*

In sum, the information sought pertains to the property documents, supplied by the third party in the office of Forest Department while obtaining permission for felling 23 trees from the said property. It is not in dispute that Deputy Conservator of Forest

North Goa Division at Ponda, Goa vide order No. DCFN/CLM-20/2019-20/02 dated 28/04/2020 granted permission to fell 23 numbers of trees from the property known as "Gurkhem" in survey No. 14/3 situated at Dharbandora, Goa.

14. The nature of information sought pertains to the documents submitted by the party to get permission /licence from the public authority, who is the absolute authority to grant licence. Though the said documents such as survey records, occupancy or any other documents are related to third party, the approval/permission was granted on the basis of said documents by the public authority in exercise of its public functions. Hence the said permission and other documents supplied by the concerned party to obtain the permission is certainly not confidential information and the same is in public domain. Any deviation in carrying out this public activity that is from felling of trees beyond the permission or across the boundary would affect public right, safety as well as environmental damage.
15. The Appellant is not asking documents of all movable property or assets but the information submitted to the public authority while obtaining the permission i.e documents submitted for fulfilling of statutory requirement. Details of individual property records are clearly private information, however same should not be characteristic of public transaction as the details of property sought are only for limited purpose, i.e to know whether there is any procedural lapse in granting the permission and has nothing to do with title document. Once a person applies before some public authority to seek permission for an activity which has externality the same is certainly classifies as public activity therefore the claim of personal information cannot be accepted.
16. It is a matter of fact that the purported information is in exclusive custody of the Forest Department. It is also admitted that

the said document has been submitted for fulfilment of statutory requirement, therefore the said document belongs to public authority and same is in public domain.

Hon'ble High Court of Madras in the case of **Ms. V.V. Mineral v/s The Director of Geology & Mining (W.P. No. 5427/2007)** has held that:-

*"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 issue may not arise, especially when they are public documents. By disclosure of such information, no privilege or business interest 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.*

*16. From the above it is clear that when [RTI Act](#) was enacted it does not give any full immunity for disclosure of a third party document. But, on the other hand, it gives the authorities under [RTI Act](#) to weight the pros and cons of weighing the conflict of interest between private commercial interest and public interest in the disclosure of such information."*

Considering the above ratio laid down by the High Court and the fact that no harm and injury would cause to the third party if information is disclosed, I am of the opinion that, Appellant is



entitled for the information and therefore the appeal is allowed with the following:-

## **ORDER**

- The PIO is directed to provide the information on point No. 5 and 17 of the application dated 29/07/2020, free of cost to the Appellant within **FIFTEEN DAYS** from the receipt of the order.
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

**(Vishwas R. Satarkar)**

State Chief Information Commissioner