

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

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Appeal No. 75/2021/SCIC

Smt. Esmeralda M. Barreto,
W/o. Late Shri. Jeromme M. Dsilva,
R/o. H.No. 193, Dactolem,
Down Mangor, Vasc-Da-Gama,
Goa. 403802.

.....Appellant

V/S

1. The Senior Technical Examiner,
Public Information Officer,
Technical Section,
Directorate of Vigilance,
Altinho, Panaji Goa.

2. The Director,
First Appellate Authority
Directorate of Vigilance,
Serra Bldg., Near All India Radio,
Altinho, Panaji Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 25/03/2021
Decided on: 11/04/2022

FACTS IN BRIEF

1. The Appellant, Smt. Esmeralda M. Barreto, W/o. Late Shri. Jeromme M. Dsilva, R/o. H.No. 193, Dactolem, Down Mangor, Vasc-Da-Gama, Goa by her application dated 02/03/2020 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought information inter-alia action taken on her complaint dated 09/06/2015 filed before the public authority.
2. The said application was transferred to another, PIO, Technical Section, Directorate of Vigilance, Panaji under section 6(3) of the Act.
3. The PIO responded to the said application on 20/04/2020 by refusing to furnish the information with the reasoning that the same is exempted under section 8(1)(h) of the Act.

4. Dissatisfied with the reply of the PIO, Appellant preferred first appeal before the Director of Vigilance, Altinho, Panaji Goa on 28/05/2020 under section 19(1) of the Act being the First Appellate Authority (FAA).
5. The FAA by its order, upheld the decision of the PIO, thereby dismissed the first appeal.
6. Aggrieved with the order of FAA dated 29/12/2020, the Appellant landed before the Commission with this second appeal under section 19(3) of the Act, with the prayer to set-aside the order of FAA, to direct the PIO to provide the information sought for and to award the compensation for the loss and suffering.
7. Notice was issued to the parties, pursuant to which the PIO, Shri. Shashikant S. Kamat appeared and filed his reply on 16/07/2021, FAA duly served opted not to appear in the matter.
8. According to the Appellant, through her RTI application, she sought certain information with regards to one complaint lodged by Adv. Amaro M. Henriques, through power of attorney of her father. According to the said complaint she claims to be the owner of the property bearing chalta No. 68 of P.T. Sheet No. 149 of the city survey of Vasco-Da-Gama, Goa and the PWD has constructed the road in the said property by making an encroachment in their private property. She further claims that neither the permission/ consent is obtained from them nor the said property has been acquired by the Government by due process of law. She further claims that the matter was being followed up with public authority since long, however the PIO has been giving tame excuses to the Appellant. She filed the present RTI application to know the outcome of her complaint. However the PIO refuse to divulge the information by virtue of exemption under section 8(1)(h) of the Act.

Further according to the Appellant, she was the victim of illegal encroachment by PWD authorities and therefore entitled for information.

9. On the other hand, the PIO contended that, information sought for by the Appellant was in respect of a complaint which was under inquiry and therefore the said information cannot be furnished in view of section 8(1)(h) of the Act as the same could have possibly impeded the process of investigation and amount to undue interference in the process of inquiry and the investigation could have been exposed.
10. Perused the pleadings, reply, rejoinder, written arguments and considered the oral arguments advanced by the rival parties.
11. Learned Counsel, Adv. Ravi Anand appearing on behalf of Appellant argued that the complaint was filed on 09/06/2015 and sought investigation from the Vigilance Department for unauthorised construction of the road and utilisation of the public money spent for illegal construction. Even after the elapse of 7 years, the Appellant has not seen any concrete action in respect of said complaint. The investigation or inquiry cannot be continued for unlimited time and the inquiry has to attain its logical conclusion at a certain point.

He further argued that, the PIO who is denying the information under section 8(1)(h) of the Act, must show satisfactory reason as to why disclosure of such information would impede the process of investigation. The opinion of the public authority must be based on some material. Further according to him, exemption was wrongly claimed by the Respondents without illustrating any specific ground, and alleged that the Respondent No. 2 (FAA) did not act as a judicious authority but endorsed the view expressed by the PIO and submitted that he is entitled for the information

sought. To substantiate his case, he placed reliance on the judgement of High Court of Delhi in the case **Bhagat Singh v/s Chief Information Commissioner & Ors. (2008 (100) DRJ 63)**; the judgement of High Court of Delhi in the case **B.S. Mathur v/s Public Information Officer of Delhi High Court (2011 (125) DRJ 508)**; the order of CIC in the case of **Mr. Arun Kumar Agarwal v/s The CPIO of SEBI (CIC/MP/A/2014/001006-BJ)**.

12. The PIO, Shri. Kamat argued that since the inquiry and investigation is not complete and over, the information sought for by the Appellant cannot be disseminated. He submitted that furnishing the information would cause undue interference in the process of inquiry and investigation and relied upon the speaking order passed by the FAA.

13. Considering the contention of the rival parties, it may be relevant to go through section 8(1)(h) of the Act, which reads as under:-

"8(1)-Exemption from disclosure of information.
_____ (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,____
(h)- information which would impede the process of investigation or apprehension or prosecution of offenders;"

14. Let us glance through the judgement of High Court of Delhi relied upon by the Adv. R. Anand for the Appellant. In the case of **Bhagat Singh v/s Chief Information Commissioner & Ors. (Supra)** the High Court of Delhi has observed in para No. 12 and 13 that:-

"12. The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge

based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy. By one fell stroke, under the Act, the maze of procedures and official barriers that had previously impeded information, has been swept aside. The citizen and information seekers have, subject to a few exceptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act. As is reflected in its preambular paragraphs, the enactment seeks to promote transparency, arrest corruption and to hold the Government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein.

13. Access to information, under [Section 3](#) of the Act, is the rule and exemptions under [Section 8](#), the exception. [Section 8](#) being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under [Section 8](#), exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being

hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information."

15. Adv. R. Anand also pointed out para No. 19 and 22 of the judgement of High Court of Delhi in the case of **B.S. Mathur v/s Public Information Officer of Delhi High Court (Supra)**, which reads as under:-

"19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation."

22..... The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would "impede" or even on a lesser threshold "hamper" or "interfere with"

the investigation. This burden the Respondent has failed to discharge.”

16. Furthermore the High Court of Delhi in the case of **Adesh Kumar v/s Union of India & Ors. (W.P. No. 3542/2014)** has held as under:-

"10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under [Section 8\(1\)\(h\)](#) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution.”

17. In the present case, admittedly the complaint was lodged by the Appellant on 09/06/2015. The investigation on the issue is going on since last 7 years. The authority withholding the information did not show at what stage inquiry is pending, whether it is in preliminary stage or advance stage. They have even failed to substantiate how the disclosure of information is likely to impede the process of investigation, if not at the stage of reply to the application at least at the stage of first appeal or atleast before the Commission. They have not shown us how and why the release of such information would cause prejudice to the investigation. A mere apprehension of an impediment cannot be a ground to deny the information at least to the party who has filed the complaint. Unfortunately the investigation is pending since last 7 years. In fact, it is in everybody's interest that the investigation is completed expeditiously and the conclusion is declared as soon as possible. In

the absence of any convincing reason, I cannot accept the denial of information is appropriate as contemplated under section 8(1)(h) of the Act.

18. Considering the nature of information sought, no matter whether the investigation has been complete or not, the Appellant was not exploring the course of action that will be adopted or is adopted in the investigation. The Appellant is merely seeking the access to notings, correspondence and action that has been initiated in pursuance of the complaint lodged by her on 09/06/2015 before the Vigilance Department.

Considering the enormous delay in investigation, and the failure of public authority to justify the denial of information. I find that the Appellant deserves relief. Therefore I hereby direct the PIO to release the information sought on the basis of material available and collected by the Public authority, within the period of **FIFTEEN DAYS.**

With this discussion and considering the precedents and position of law, I dispose off the present appeal

- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner