

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

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Appeal No. 289/2021/SCIC

Shri. Rosario Santana Baretto,
H.No. 1427/A, Manzilwaddo,
Benaulim, Salcete-Goa.

.....Appellant

V/S

1. Smt. Sunita Sawant,
Dy. SP/ Sub-Divisional Police Officer,
The Public Information Officer,
Crime Branch, Ribandar,
Ilhas-Goa.

2. Shri. Shobhit Saksena (IPS),
SP (Crime),
The First Appellate Authority,
Crime Branch, Ribandar,
Ilhas-Goa.

.....Respondent

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 25/11/2021

Decided on: 20/03/2023

FACTS IN BRIEF

1. The Appellant, Shri. Rosario Santana Baretto r/o. H.No. 1427/A, Manzilwaddo, Benaulim, Salcete-Goa vide his application dated 10/07/2021 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Office of the Director General of Police.
2. The PIO of the Office of the Director General of Police transferred the said application to the PIO of DYSP Crime Branch, Ribandar; PIO/ SDPO, Panaji; PIO/SDPO Porvorim; PIO/SDPO Mapusa; PIO/SDPO Bicholim; PIO/SDPO Ponda; PIO/SDPO Margao; PIO/SDPO Vasco; PIO/ SDPO Quepem.
3. The PIO, DY. Superintendent of Police, Crime Branch, Ribandar, Goa responded the said application on 14/08/2021 in the following manner:-

"Refer your application dated 10/07/2021 addressed to the PIO/ Office of the Director General of Police, 1st Floor, Police HQ Building, Panaji-Goa, seeking information under Right to Information Act, 2005. The copy of the said application has been received by this office on 20/07/2021 on transfer u/sec 6(3) of RTI Act from the PIO/ Office Superintendent, Adm, Branch DGP's Office, PHQ, Panaji-Goa vide File No. M-I(B)/RTI-148/6975/2021 dated 16/07/2021, requesting to furnish information of your application.

The information sought by you, pertaining to Crime Branch PS Ribandar Goa is as under:-

<i>Sr. No.</i>	<i>Information Sought</i>	<i>Information furnished.</i>
<i>a)</i>	<i>Give me the copy/ copies of charge sheet documents (482 pages) against both Ex-PWD Minister Shri. Churchill Alemao and Shri. Digambar Kamat by Crime Branch, Ribandar-Goa before the Special Anti-Corruption Court at Panaji-Goa in Multi Crore water supply and sewerage project, alongwith the complaint filed by the said Shri. Sunil Kawthankar.</i>	<i>As, per the information furnished by APIO/ Shri. Rajesh Kumar, Police Inspector, Information sought is in respect of Crime Branch PS Cr.No. 28/2013 u/s 120-B, 403, 409, 420 IPC & sec 13(2)(d) r/w 13(2) of Prevention of Corruption Act was Charge Sheeted on 30/11/2018 against Shri. Churchill Alemao and others and same is pending before Hon'ble District Court Margao vide Spl. Case No. 01/2019 court and Crime Branch PS Cr.No. 93/2015 u/s 120-B, 201 IPC & sec 7,8,9 & 13 of Prevention of Corruption Act was Charge sheeted against Shri. Churchill Alemao and Shri. Digambar Kamat and 05 others on 25/09/2015 and same is</i>

		<i>pending before Hon'ble District & Session Court Mapusa vide Spl. Case No. 06/2015. Hence cannot be furnished as both the cases are subjudice.</i>
<i>(ii)</i>	<i>Give me the copies of all Police complaint filed against Shri. Churchill Alemao r/o. Varca, Salcete-Goa by Citizens of Goa before all Police Stations in the State of Goa, North Goa and South Goa as per the Police History Sheets(s)</i>	<i>As per the information furnished by APIO/ Shri. Rajesh Kumar, Police Inspector, Crime Branch, complaint filed against Churchill Alemao is enclosed having 12 pages.</i>
<i>(iii)</i>	<i>Give me the copies of all Police complaints filed by Shri. Churchill Alemao r/o Varca, Salcete-Goa against any citizen of Goa before all Police stations in the State of Goa, North Goa and South Goa as per the Police History Sheets(s).</i>	<i>As per the information furnished by APIO/ Shri. Rajesh Kumar, Police Inspector, Crime Branch, Information sought in respect of Crime Branch, Ribandar be treated as "NIL".</i>
<i>(iv)</i>	<i>Give me the status of the above Louis Berger (JICA) Case filed before the Special Anti-Corruption Court at Panaji Goa along with Final Judgement & order passed by the said Special Anti-Corruption Court at Panaji-Goa.</i>	<i>As per the information furnished by APIO/ Shri. Rajesh Kumar, Police Inspector, Crime Branch, Louis Berger (JICA) case is under trial before Additional & Session Judge Mapusa vide Spl. Case No. 6/2015.</i>
<i>b)</i>	<i>Give me the copies of all Police complaints filed against Shril Nilesh Prabhu Dessai (Ward Panch)/ Deputy Sarpanch of VP Cana-Benuelim, Salcete-Goa) r/o House No. 595/4, Kundaikar chawl, Grande Pulvaddo, Benualin, Salcete-Goa against any Citizens of Goa before all Police Stations, SDPO's and</i>	<i>As per the information furnished by APIO/ Shri. Rajesh Kumar, Police Inspector, Crime Branch, Information sought in respect of Crime Branch, Ribandar be treated as "NIL".</i>

	<i>SP's Office at North & South Goa, DGPs Office at Panaji, in the State of Goa, North Goa, South Goa as per the Police History Sheets(s), along with the course of action taken by the respective Police Station(s) in the State of Goa, till date.</i>	
<i>c)</i>	<i>Give me the copies of the complaint(s) by the Citizen of Goa filed in 1986 against Shri. Churchill Alemao r/o Varca, Salcete-Goa for trampling the Indian National Flag during the official Language agitation in 1986 before the concerned Police Station of South Goa, Margao Goa at the Rajendra Prasad Stadium.</i>	<i>As per the information furnished by APIO/ Shri. Rajesh Kumar, Police Inspector, Crime Branch, Information sought in respect of Crime Branch, Ribandar be treated as "NIL".</i>
<i>d)</i>	<i>Suo-Moto Inspection and Suo-Moto Disclosure under section 4(1) of the RTI Act 2005 of the above case file.</i>	<i>As per the information furnished by APIO/ Shri. Rajesh Kumar, Police Inspector, the request for Suo-Moto Inspection and Suo-Moto Disclosure are rejected as both the cases are Subjudice and pending trial before the competent courts.</i>

4. Being aggrieved and not satisfied with the reply of the PIO, the Appellant preferred first appeal before the Superintendent of Police, Crime Branch at Ribandar, Goa on 15/09/2021 being the First Appellate Authority (FAA).
5. The FAA vide its order upheld the reply of the PIO and dismissed the first appeal on 20/10/2021.
6. Aggrieved and dissatisfied with the order of the FAA dated 20/10/2021, the Appellant landed before the Commission by way of this second appeal under Section 19(3) of the Act, with the prayer to direct the PIO to furnish the information, to impose penalty and to initiate disciplinary action against the PIO for denying the information.

7. Notices were issued to the parties, pursuant to which the representative of Appellant, Mr. Santana Afonso appeared on 17/01/2022. Adv. Harsha Naik appeared on 15/06/2022 and produced on record the order of the Department of Law and Judiciary to appear in the matter. She also placed on record the reply of the PIO and the FAA dated 15/06/2022 and matter was posted for arguments.
8. Neither the Appellant nor his representative remained present for subsequent hearings viz. 21/10/2022, 29/11/2022, 04/01/2023, 25/01/2023, 20/02/2023, 01/03/2023 and 20/03/2023. I am disposing the present appeal upon considering the submissions of the Adv. Harsha Naik.
9. The incumbent PIO through his reply dated 15/06/2022 contended that, information sought by the Appellant as regards to point No. (a)(i) and (d) has been rejected as both the cases are subjudice and pendial trial before the competent court.

The information as regards to point No. a(ii), Sr. no. b and c are not available with Crime Branch at Ribandar and information as regards to point No. a(iv) was already provided to the applicant.

10. On meticulous reading of the reply dated 14/08/2021 provided by the PIO to the RTI application, particularly to the reply at point No. a(i), the PIO categorically informed that Cr.No. 28/2013 registered under Section 120B, 403, 409, 420 of IPC and Sec. 13(2)(d) r/w 13/2 of Prevention of Corruption Act was charge sheeted on 30/11/2018 against Shri. Churchill Alemao and others and same is pending before District and Session Court, Margao vide SPL. Case No. 01/2019.

And with regards to the Crime No. 93/2015 under Section 120 B, 201 of IPC and Section 7,8,9 and 13 of Prevention of Corruption Act, was charge sheeted against Shri. Churchill Alemao

and Shri. Digambar Kamat and 05 others on 25/09/2015 and the same is pending before the District and Session Court at Mapusa Goa vide Special Case No. 06/2015.

11. Adv. Harsha Naik appearing for the PIO vehemently submitted that, since the District and Session Court already framed the charges against the accused in accordance with the law, the Court has taken the cognisance of the matter and disclosure of this information at this stage would cause impediment in the prosecution of the case. Besides the Appellant has option to obtain the said information from the District and Session Court under the provisions of CrPC.

12. Full Bench of Central Information Commission in **C. Seetharamaiah v/s Commissioners of Customs & Central Excise (Appeal No. CIC/AT/A/2008/01238)** dated 07/06/2010 has held as under:-

"27.....In our view an information which is evidence or is related to evidence in an ongoing prosecution comes under the control of the Trial Court, within the meaning of Section 2(i) of the RTI Act which states as follows: "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to.....

28. It is significant that this Section uses two expressions about the location of a given information, i.e. "held" and "under the control of". In our view, expression 'held' implies that a public authority has physical possession of a given information. The word "under the control of" implies that the information, regardless of which public authority holds it, is under

*the control of a specific public authority on whose orders alone it can be produced in a given proceeding. In the present case, the material sought by the appellant is undoubtedly related to an ongoing court proceeding and hence it can be rightly said to be under the control of Trial Court, who alone can decide how the information is to be dispensed. Any action under the RTI Act or any other Act for disclosure of that information to the very party who is arraigned before the Trial Court or to anyone representing that party, would have the effect of interfering with the discretion of the Court, thereby impeding an extant prosecution proceeding. In *S.M. Lamba v. S.C. Gupta and another* Delhi High Court has held "This court would like to observe that under the Code of Criminal Procedure, 1973 once the stage of an order framing charges have been crossed, it would be open to the accused to make an appropriate application before the learned trial court to summon the above documents in accordance with the law.*

30. *It is, therefore, important that all determinations about disclosure of any information relating to an ongoing prosecution should be through the agency of the Trial Court and not otherwise."*

13. The Central Information Commission in the case **Mr. R.K. Morarkar v/s Central Bank of India (CIC/908/ICPB/2007)** has held that:-

"... This Commission has consistently taken a view that, if the information sought relates to a pending proceeding before a competent Court/ Tribunal, then

said information should be obtained only through Court / Tribunal and not under the provisions of the RTI Act.”

14. In the present case in hand, the matter is sub-judice. The prosecution proceedings have neither been finally disposed off nor has the matter been finally concluded, therefore said information clearly falls well within exemption contemplated in Section 8(1)(h) of the Act. Thus, the FAA was just and right in refusing to disclose the information sought by the Appellant. The RTI application dated 10/07/2021 was replied by the PIO on 14/08/2021 i.e. within stipulated time. It is not the case that the PIO was unwilling to provide the information. Therefore I am of the opinion that, there is no malafide intention in non-providing the information. Hence I am not inclined to impose penalty or recommend disciplinary action against the PIO as prayed by the Appellant. For the reason recorded aforesaid, I find no merit in the appeal therefore, same is disposed off with the following:-

ORDER

- The appeal stands dismissed.
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner