

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Appeal No. 69/SIC/2010

Mr. Nerlon Albuquerque,
R/o. H. No. 215-A,
Alto Porvorim,
Bardez – Goa

..... Appellant.

V/s.

1) Public Information Officer,
Superintendent of Police (HQ),
Panaji – Goa

..... Respondent No. 1.

2) First Appellate Authority,
Inspector General of Police,
Panaji - Goa.

..... Respondent No. 2.

Appellant in person.

Adv. N. Dias for Respondent No. 1.

ORDER
(18-10-2010)

1. The Appellant, Nerlon Albuquerque, has preferred this Appeal praying that the impugned order be quashed and set aside and consequently the Respondent No. 1 be directed to furnish the information/documents sought by the Appellant at Sr. No. 6, 7, 8, 9, 12, 15 and 16 of the Appellant's application dated 26.12.2009.

2. The brief facts leading to the present Appeal are as under:

That the Appellant, vide his application dated 26.12.2009 had applied to the Superintendent of Police/Respondent No. 1 for certain information under Right to Information Act, 2005 ('R.T.I.' Act for short). That by letter dated 22.01.2010, the Respondent No. 1 provided information sought by the Appellant at Sr. No. 1 to 5 and 10, 11, 13, 14, 17 and 18 of his application and in respect of Sr. No. 6, 7, 8, 9, 12, 15 and 16 request was rejected under section 8(1) (j) of R.T.I. Act. Being aggrieved the Appellant filed an Appeal

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before the First Appellate Authority ('F.A.A.' for short). However, the F.A.A. dismissed the Appeal. Being aggrieved by the order the Appellant has preferred this Appeal on various grounds as set out in the memo of Appeal.

3. The Respondents resist the Appeal and the reply of the Respondent No. 1 is on record. It is the case of the Respondent No. 1 that the information sought by the Appellant, vide his letter dated 26.12.2009 comes under the provision of section 8(1) (j) of the R.T.I. Act as the information sought by the Appellant at Sr. No. 6, 7, 8, 9, 12, 15 and 16 are regarding third party information. The Respondent No. 1 relies on the order dated 25.09.2008 passed by this Commission in Appeal No. 35/2008 which states as "Nobody can deny the need for keeping a written record of performance of an official in a prescribed format. However, it is not necessary definitely not in public interest to release these documents for scrutiny by all officers". The Respondent No. 1 specifically denies the grounds mentioned in the Memo of Appeal. According to Respondent No. 1 only that information which comes within the provisions of section 8(1) (j) of the R.T.I. Act has been refused. It is also the case of the Respondent No. 1 that the order dated 22.01.2010 passed by the Respondent No. 2 is just, legal and within the provisions of the Act and therefore is not liable to be quashed and set aside. According to Respondent No. 1 order passed by him is a reasoned order and that Appeal is liable to be dismissed.

4. Heard the arguments. The Appellant argued in person and the Learned Adv. Shri N. Dias argued on behalf of Respondent No. 1.

Appellant referred to the facts of the case and submitted that some information has been furnished; however, information in respect of queries/Sr. No. 6, 7, 8, 9, 12, 15 and 16 has not been furnished. He submitted that personal information is not sought. He next referred to the

section 8(1) (j) and submitted that the same is not applicable. Detail written arguments of the Appellant are on record.

Adv. N. Dias also referred to the facts of the case in detail. According to him whatever information was to be given has been furnished. However, regarding other, the same could not be furnished in view of the provisions of section 8(1) (j) of the R. T. I. Act. He also referred to the orders passed. According to him the orders are just and proper.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is seen that by Application dated 26.12.2010 the Appellant sought certain information under R.T.I. Act. The information consists of about 18 items – Sr. No. 1 to 18 and in the nature of queries and certain documents. By reply dated 22.01.2010 the Respondent No. 1/Public Information Officer furnished the information. However, the information to points No. 6, 7, 8, 9, 12, 15 and 16 was not furnished in view of section 8(1) (j) of the R.T.I. Act. It is seen that Appellant preferred First Appeal. By order dated 03.02.2010 it was observed "As regards demand for the copy of the service book by the Appellant, P.I.O. SP (HQ) is advised to use option available u/s. 11 of the R.T.I. Act, 2005." By letter dated 15.02.2010 the F.A.A. informed the Appellant that reply of the Appellant dated 22.01.2010 in respect of Sr. No. 6, 7, 8, 9, 12, 15 and 16 of his application dated 26.12.2009 is upheld.

6. Section 8(1) (j) lays down as under:

"8. Exemption from disclosure of information.

1. Notwithstanding anything contained in this Act, there shall be no

obligation to give any citizen, --

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)

(j) Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

It is to be noted here that section 8(j) of the Act gives limited protection. The information asked can be protected, if it satisfies either of the following conditions:- "it should be an information which relates to personal information and the disclosure of such information has no relationship to any public activity or interest (ii) or it would cause unwarranted invasion of the privacy of the individual."

The information sought in the instant case, though in the nature of personal information, has a direct nexus with the public activity and interest.

It is pertinent to note the observations of the Hon'ble High Court of Kerala in Centre of Earth Science Studies v/s. Anson Sebastian 2010 (2) ID 111 (Kerala High Court). In para 3 it is observed as under:

"3. The next question to be considered is whether the information sought by the first respondent relates to personal information of other employees, the disclosure of which is prohibited under Section 8 (1) (j) of the Act. Here again, we notice that under exceptional circumstances even personal information disclosure of which is prohibited under the main clause, can be disclosed if the Central Public Information Officer or the State Public Information Officer or the appellate authority as the case may be is satisfied that the larger public interest justifies disclosure of such information. What is immune from disclosure as personal information is not one relating to any public activity or interest and what is prohibited is furnishing of information which causes unwarranted invasion of the privacy of the individual. In this case we notice that the information sought by the first respondent pertains to copies of documents furnished in a domestic enquiry against one of the employees of the appellant-organization. Domestic enquiry is an open trial which is essentially initiated as part of disciplinary proceedings against the employee. Domestic enquiry involves production of evidence including documents, some of which are even public documents. We do not know how documents produced in a domestic enquiry can be treated as documents relating to personal information of a person, the disclosure of which will cause unwarranted invasion of his privacy. Similar is the position with regard to the particulars of Confidential

Reports maintained in respect of co-employees of the first respondent all of whom are scientists. Confidential Reports are essentially performance appraisal by higher officials which alongwith other things constitute the basis for promotions and other service benefits”.

7. Coming to the points/items asked i.e. point (Sr. No.) 6, 8 and 15 what is asked is seeking information regarding adverse remarks. No copies are sought. I have given anxious thought to this aspect and I am of the opinion that such remarks pertaining to any officer are inextricably linked to the public interest. All these represent assessment of work and the conduct of concerned officer, work performance, etc. which ultimately relates to the discharge of official duties in which public has vital interest. All these and material appearing in ACRs are the basis for adjudging if the concerned official can be entrusted with more strenuous responsibilities or not. Viewed in this context information to points (Sr. No.) 6, 8 and 15 can be given/furnished.

Regarding point (Sr. No.) 15 though question appears to be complex the same relates to whether there were adverse remarks and whether the same were expunged.

8. Coming to the points/items asked i.e. Point (Sr. No.) 7, 9, 12 and 16. It is to be noted here that First Appellate Authority has observed about using option available under section 11 of the R.T.I. Act. It is not known whether Public Information Officer has followed the same or not as the records do not disclose the same.

While deciding these points the views of third parties/concerned persons/officers are to be taken into account by the Public Information Officer under R.T.I. Act. Third party should be given an opportunity to put

forth its case before the P.I.O. That information is exempt from disclosure under any of the clauses of section 8 or otherwise and it is for the Public Information Officer to decide in accordance with law.

I would not like to embark upon this exercise as third party may lose his chance to put his case before Public Information Officer and also may lose his valuable right of First Appeal. In my view Public Information Officer should do this.

9. In view of all the above, information in respect of point (Sr. No.) 6, 8 and 15 can be given. The points (Sr. No.) 7, 9, 12 and 16 are to be referred back to the Public Information Officer with a direction to comply the Order of First Appellate Authority expeditiously if the same is not complied so far.
10. In view of all the above, I pass the following Order:

ORDER

The Appeal is allowed. The Order of First Appellate Authority is partly set aside. The Respondent No. 1 is hereby directed to furnish information in respect of point No. 6, 8 and 15 within fifteen days from the receipt of the Order. In respect of point No. 7, 9, 12 and 16 the Respondent No. 1 is directed to dispose the same after complying with section 11 of R.T.I. Act. This should be done within fifteen days from the receipt of the Order.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 18th day of October, 2010.

Sd/-
(M.S. Keny)
State Chief Information Commissioner

