

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No. 28/SCIC/2010/

Mrs. Joan Mascarenhas E. D'Sousa,
H.No. 315/4, Tropa Vaddo,
Sodiem, Siolim- Goa.

... Appellant

V/s

1) The Public Information Officer,
Superintendent of Police (North),
Porvorim –Goa.

... Respondent No.1

2) The First Appellate Authority,
Inspector General of Police (Goa),
Panaji –Goa.

... Respondent No.2

Appellant present in person.

Respondent No. 1 and 2 present.

Adv. H. Naik for respondent No. 1.

Adv. N. Narvenker for Respondent No. 2.

J U D G E M E N T
(22/10/2010)

1.The Appellant, Smt. Joan Mascarenhas e D'Souza, has filed the present appeal praying:- that the respondents be directed to furnish the required information to the Appellant in terms of application dated 04/11/2009; that compensation be provided and that penalty be imposed.

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

That the husband of the Appellant was arrested on a false Complaint by Mrs. Poonam Patre under non-bailable sections and was kept in police lock up for one night. That the Appellant had filed a petition before the I.G.P. placing her grievances. It is the case of the Appellant that on 04/11/2009 she filed an application seeking certain information, under Right to Information Act ('RTI' Act for short) from the Public Information Officer ('PIO' for short) Respondent No. 1. That the Appellant is the wife of Shri Dominic D'Souza. That the Respondent No. 1, vide his reply No.SP/North/RTI/755/2009 dated 30/11/2009 refused to furnish the

...2/-

Appellant with the information sought under section 81(h) which is totally fallacious. That in the present case appellant is the wife of the victim. It is the case of the Appellant that the information sought in no way would impede or interfere with the process of investigation of the police department. That the Respondent No. 1 failed to give reasoning. That the Appellant filed an appeal before the First Appellate Authority. That the First Appellate Authority by order dated 13/01/2010 directed Public Information Officer /Respondent No. 1 to furnish part of the information to the Appellant at Sr. 1, 4, 5, 6, 7 and 8. Being aggrieved the Appellant has preferred the present appeal on the grounds as mentioned in the memo of appeal..

3. The Respondents resist the application and the say of the Respondent No. 1 is on record. It is the case of the Respondent No. 1 that the request of the Appellant was rejected by reply dated 30/11/2009 on the ground specified in section 8(1)(h) of the Right to Information Act 2005. That pursuant to the order dated 13/01/2010 of the First Appellate Authority, the Appellant was requested to collect the copy of F.I.R in Mapusa P.S. and that the Appellant had collected the copy of F.I.R. As regards other documents at Sr. No. 4, 5, 6,7 and 8 stipulated in the said order the Appellant/ Applicant has been directed to approach the sub-Divisional Magistrate, Mapusa, for obtaining copies there of since the matter is still under investigation.

4. Heard the arguments. The Appellant argued in person and the learned Adv. Smt. N. Narvekar argued for Respondent No. 1 and the learned Adv. Smt. H. Naik argued on behalf of Respondent No. 2. All the parties advanced elaborate arguments.

Appellant referred to facts of the case in detail. According to her copy of F.I.R. is not furnished and chapter case Nos were not furnished. According to her denial was malafide Public Information Officer failed to give copy of F.I.R. and even medical report of Domnic D'Souza. She next submitted that chapter case No. ought

to have been given and that Public Information Officer should be penalized as denial is malafide. Adv. for Respondent No.1 referred to the application of the Appellant reply filed and about section 8(1) (h). According to her offences are serious investigation was going on and therefore information could not be furnished. She also referred to the appeal and appellate order. According to her penalty cannot be imposed. She next submitted that prayers cannot be granted.

Adv. for Respondent No. 2 submitted that chargesheet is now filed.

4. 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 the appellant sought certain information vide application dated 04/11/2009. by reply dated 30/11/2009 the Public Information Officer/Respondent No. 1 informed that information could not be provided under section 8(1) (h) of Right to Informtion Act 2005, as it would impede the process of investigation. It is seen that appellant preferred appeal before First Appellate Authority. By order dated 13/01/2010 the First Appellate Authority directed to issue the copy of F.I.R. to the Appellant and regarding other documents mentioned at Sr. No. 4, 5, 6, 7 and 8 can be asked from SDM office Mapusa in chapter case No. 236/2009.

6. Now I shall refer to section 8(1) (h) which is 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).....

to

(g).....

(h) information which would impede the process of investigation or apprehension or prosecution of offenders.

There is no dispute with the proposition that investigation which would impede the process of investigation, apprehension or prosecution of offenders is to be denied or withheld. However, it is to be noted here that mere existence of an investigation process cannot be a ground for refusal of information. Public Information Officer failed to show satisfactorily as to why the release of such information would hamper the investigation process.

Coming to the information asked. Copy of complaint and medical report of Domnic D'Souza. To my mind these two could be given. Accused is entitled for copy of F.I.R. Appellant herein is the wife of Domnic D'Souza. So also question 4. It is to be noted here that as per order of First Appellate Authority certain documents can be asked from SDM office. If it is so appellant could be told so. In any case it is reported that chargesheet is already filed. However no documents have been furnished. In any case since chargesheet is filed there would be no objection to furnish the information i.e. whatever information not furnished could be furnished now.

7. It was next contended that the denial is deliberate and malafiede and hence there is delay. According to advocate for Respondents there is no delay and there is no malafide intention. Apparently it appears that there is some sort of delay considering the refusal. In any case this has to tested properly on the touchstone of certain facts and hence PIO/Respondent No. 1 should be given an opportunity to explain that the same was not intentional, malafide etc.

8. In view of the above the Respondent No. 1 has to furnish the information. Since there is delay the Respondent No. 1 is to be heard on the same. Hence I pass the following order:-

...5/-

ORDER

Appeal is allowed and the Respondent No. 1 is directed to furnish the information to the Appellant vide application dated 04/11/2010 within 15 days from the receipt of this order.

Issue notice under section 20(1) of the Right to Information Act to Respondent No. 1/ PIO why penalty action should not be taken against him for causing delay due to deliberate and malafied denial. The explanation, If any, should reach the Commission on or before 26/11/2010 PIO/Respondent No. 1 shall appear for hearing.

Further inquiry posted on 26/11/2010 at 10.30 a.m.

Appeal is accordingly disposed off.

Pronounced in the Commission on this 22nd day of October, 2010.

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

