

**GOA STATE INFORMATION COMMISSION**  
**AT PANAJI**

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

**Appeal No. 52/SCIC/2010**

Shri Jervasio Pereiral,  
Through Power of Attorney,  
Joao C. Pereira,  
H.No. 40, Acsona , Utorda,  
Majorda –Goa.

....

Appellant.

V/s

1) Public Information Officer  
Supdt. of Police (S), Margao –Goa.

....

Respondent No.1

2) First Appellate Authority,  
IGP, Police HQs, Panaji –Goa.

....

Respondent No.2

Appellant absent.

Representative of the Respondent No. 1 present.

Adv. Smt. H. Naik for Respondent No. 1.

Respondent No. 1 absent.

Adv. Smt. N. Narvekar for Respondent No. 2 present.

**J U D G E M E N T**  
**(26/10/2010)**

1. The Appellant, Shri Jervasio Pereira, has filed the present appeal praying that order dated 10/02/2010 of Respondent No. 2 and letter dated 23/01/2010 addressed by Respondent No. 1 be quashed, cancelled and set aside, to direct Respondent No. 1 to furnish the information to the Appellant as sought on the application dated 02/01/2010; to initiate disciplinary proceedings and other action as per section 20 against Respondent No. 1 and 2 for deliberately and knowingly denying the documents to the appellant in open violation of Goa State Information Commission's order passed in several appeals.

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

That the Appellant had requested certified copies of several documents from the case file of cr. No.70/2008, registered upon the complaint of the Appellant dated 03/06/2008 at Verna Police Station under various sections. That the Respondent No. 1 addressed a letter dated 23/01/2010 to the Appellant rejecting the request under

restricted sections 8(1)(h) and 8(1)(j) of the Act. Aggrieved by the reply of the Respondent No. 1 dated 23/01/2010, the Appellant preferred First Appeal before Respondent No. 2. By order dated 10/02/2010 the Respondent No. 2 once again rejected the request of the Appellant on totally different grounds. Being aggrieved the appellant has preferred the present appeal on the grounds as mentioned in the memo of appeal.

3. The Respondents resist the appeal and the say of Respondent No. 1 is on record. It is the case of the Respondent No. 1 that no power- of-attorney is produced by the Appellant and as such appeal is not maintainable. That inspection of inquiry file was given and that details of I.Os.were furnished. That the request of the Appellant seeking information was rejected under section 8(1)(j) & (h). The Respondent No. 1 specifically denies the grounds mentioned in the Complaint. It is further the case of the Respondent No. 1 that offences involved in cr. No.70/2008 are of serious nature that is under section 341,324, 427 and 307 of I.P.C. That the investigation is still under process. That since chargesheet has not been filed., no documents can be issued at this stage to the Appellant. That the case papers pertaining to the said offences are being submitted for legal opinion to the director of Prosecution. It is also the case of Respondent No. 1 that information can be given to the Appellant only after the charge sheet has been filed. According to Respondent No. 1 appeal is liable to be dismissed.

4. Heard the Arguments.Shri Joao C. Pereira the Constituted P/A of Appellant argued on behalf of Appellant. The learned Adv. Smt. H. Naik argued on behalf of Respondent No.1 and the learned Adv. Smt. N. Narvenkar argued on behalf of the Respondent No.1. Appellant referred to the facts of the case in detail. According to him appellant is the Complainant and in normal course the documents ought to have been given. According to him the complainant must know the progress of the case.

He relied on a ruling of this Commission in Appeal No. 13 of 2006/police and also judgment dated 20/07/2007 in writ petition No. 337/2007 of the High Court of Bombay at Goa.

Both the Advocates supported the order of First Appellate Authority. According to them the offences are serious and as much information could not be furnished as investigation is going on.

5. I have carefully gone through the records of the case, considered the arguments advanced by the parties and also considered the rulings on which Appellant placed reliance. The point that arises for my consideration is whether the relief prayed is to be granted or not/

At the outset I must say that Right to Information Act, 2005 has been enacted to provide for a legal right to information for citizens to secure access to information under the control of Public authorities in order to promote transparency and accountability in the working of every public Authority. From the scheme of the Act it is clear that Right to information Act ensures maximum disclosures and minimum exemptions consistent with constitutional provisions prescribing at the same time confidentiality of sensitive information. Ordinarily all information should be given to the citizen but there are certain information protected from disclosure. Section 8 is an exception to the general principles contained in the act. This provision exempts disclosure of information or apprehension or prosecution of offenders.

In the instant case the Appellant made an application dated 02/01/2010 seeking certain information. By reply dated 27/01/2010 the request was rejected under section 8(1) (h) and (j) of Right to Information Act as the same is under investigation and the same related to the personal information the disclosure of such information has no relationship to any public authority or interest, which may cause

unwarranted invasion of the privacy of the individual and it will also impede the process of investigation. Being aggrieved the Appellant preferred the First appeal. By order dated 10/02/2010 it was observed as "it is observed that the case has been prolonged unnecessarily. P.I. Verna P.S. who came as representative of P.I. O., S.P. South assured that the case will be disposed by 28/02/2010. After that the copies of case papers will be furnished to the Appellant."

6. It is not in dispute that Appellant has lodged the Complaint thereby setting criminal law in motion. The said C.R. is of the year 2008 i.e. C.R. No. 70/2008. the Appellant had filed the Complaint and he wants to seek by his request the progress of the case. Whether such a request can be granted?

Sec 8(1) (h) and (j) reads as under:-

"8 Exemption from disclosure of Information.

1. Notwithstanding anything contained in this Act, there shall be no objection to give any citizen,\_\_\_\_\_

(a).....

(b).....

.....

.....

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

(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 Information Officer or the State Information Officer or the Appellate , as the case may be, is satisfied that the larger public Interest justifies the disclosure of such information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

The Appellant being Complainant he must know the progress of the case. Surprisingly and strangely the Cr. No. is of the year 2008. Assurance was given to First Appellate Authority, that case will be disposed by 28/02/2010 and after that copies of case papers will be furnished to the Appellant. 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. Both PIO and FAA failed to show satisfactorily as to why the release of such information would hamper the investigation process.

Under section 3 access to information is rule and exemptions under section 8, the exception. Section 8 is a restriction on this right and is, therefore, strictly to be construed. The PIO must show satisfactory reasons as to why the release of such information would hamper investigation process and such reasons should be germane and based on some material. Section 8 should not be used so as to evade or dodge the demand for information.

I have also perused some of the rulings of the Central Information Commission on the point. The rule of law now crystallised by the various rulings of the Commission is that the information be disclosed to the Complainant. I feel that a wise PIO while still recognizing that in all requests for information under Right to Information Act, especially when they pertain to law enforcement authorities, it becomes necessary to strike a fine balance between the imperatives of the Confidentiality of the sources of information, witness protection etc with the right of the citizen to get information.

7. In the instant case, the Cr. is of the year 2008. Before the First Appellate Authority it was stated that case will be disposed by 28/02/2010 and after that copies of the case papers would be furnished to the Appellant. In the reply dated 24/06/2010 it is mentioned that the case papers pertaining to the said offences are

being submitted for legal opinion to the Director of Prosecution. All these show that investigation is complete or almost complete. Even otherwise the Appellant is the Complainant and there is no possibility of misuse of the information.

8. In view of all the above, I am of the opinion that the request of the Appellant is to be allowed.

9. I must mention here that there are various rulings of the Commission on this point. Appellate Authority as well as PIO should follow the same as far as possible. No mechanical approach to be adopted.

10. Coming to the prayers. Prayer (d) for disciplinary proceedings and action as per section 18 and 20 cannot be granted. The invocation of section 8(1)(h) and (j) are within law and the same cannot be termed as malafide. Reply to the request is also within time. However it must be noted that the same should not be in a stereotype way. The same should not be mechanically to avoid the giving of information PIO should give valid reasons for the same and justify the same with reasons.

11. In view of all the above I pass the following order:-

**O R D E R**

The Appeal is allowed and order of First Appellate Authority is set aside.

The Respondent No. 1 is hereby directed to furnish the information to the Appellant as sought, vide application dated 02/01/2010, within 20 days from the date of receipt of the order.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 26<sup>th</sup> day of October, 2010.

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



