

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Appeal No. 175/SIC/2010

Jowett D'Souza,
H.No. 139, Sernabatim,
Colva, Salcete –Goa.

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Appellant.

V/s

1) Public Information Officer,
Supt. Of Police, South District, HQ's,
Margao, Salcete –Goa.

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Respondent No. 1.

2) First Appellate Authority,
Inspector General Police,
PHQ's Panaji –Goa.

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Respondent No. 2.

Appellant in person.

Respondent No. 1 and 2 absent.

Constable on behalf of Respondent No. 1 present.

Adv. N. Narvenker in person.

J U D G M E N T
((06/12/2010))

1. The Appellant, Jowett D'Souza, has filed the present Appeal praying that the Respondent's order dated 27/04/2010 passed by First Appellate Authority (IGP) be quashed, cancelled and set aside; that the letter dated 02/03/2010 be cancelled, quashed and set aside; that the Respondent No. 1 be directed to furnish information/certified copies of documents at Sr. No. 2, 3, 4, 5 and 6 of the Appellant's letter dated 09/02/2010; that disciplinary action be initiated against Respondent No. 1 and 2 for malafidely invoking section 8(1) (h) of the RTI Act for denying information and for imposing penalty.

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

That the Appellant, vide his letter dated 09/02/2010, sought certain information, under Right to Information Act 2005('RTI' Act for short) from the Public Information officer ('PIO')/Respondent No. 1. That the Respondent no.1 vide his letter dated 02/03/2010 addressed to the Appellant furnishing information in respect of point /Sr. No. 1 and rejecting the request in respect of Sr. No. 2, 3, 4, 5 and 6

under section 8(1) (h) of the Right to Information Act 2005. Being not satisfied the Appellant preferred the First Appeal before the First Appellate Authority/Respondent No. 2. That after hearing the Appeal the Respondent No. 2 dismissed the appeal by order dated 27/04/2010 thereby upholding the findings of Respondent No.1. Being aggrieved by the said 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 their reply is on record. It is the case of Respondent No. 1 that in pursuance of the Appellant's application the Respondent No.1 by reply dated 02/03/2010 provided the information as regards point No. 1 and rejected the information as regards to point No. 2, 3, 4, 5 and 6 of the said application dated 09/02/2010 on the grounds specified in clause (h) of section 8(1) of Right to Information Act. That the Respondent NO. 2 upheld the said decision of Respondent No. 1 in the appeal preferred by the Appellant. It is the case of Respondent No. 1 that sanction for prosecution was sought and various reminders were sent in connection with the section. It is further the case of Respondent No. 1 that as soon as the appropriate sanction is given by the competent Authority, the investigation officer will file chargesheet against the offender and action taken in this respect will be Communicated to the Appellant. That it is mandatory to obtain prior sanction before filing chargesheet. That Respondent No. 1 has bonafidely invoked section 8(1) (h) as per law and that the contention that Respondent has acted in perverse manner is not correct. It is also the case of Respondent No. 1 that a report under section 173 of Cr. P.C. is sent to the Judicial Magistrate First class. According to the Appellant the appeal is liable to be dismissed.

4. Heard the arguments. The Appellant argued in person and the learned Adv. Smt. N. Narvenker argued on behalf of the Respondent No. 1.

According to the Appellant he is the Complainant and the case is under section 420. He also referred to the facts of the case in detail and also to

immigration Act. According to him he is the Complainant and has every right to know about the progress of the Complaint. He relied on (i) Kishan Lal V/s Dharmendra Bafna & anr (2009)7 SCC 685 and 6/7 rulings of this Commission the Xerox copies of which are on record.

Adv. for Respondent No. 1 also referred to the facts of the case in detail. According to her sanction is awaited and no sooner sanction is received the charge sheet would be filed.

5. I have carefully gone through the records of the case and 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, vide his application dated 09/02/2010, sought certain information from the Respondent No. 1. The information is in respect of Cr. No. 417/03 dated 18/12/2003 registered at Margao Town Police Station. The information by and large consists of certain documents and there are about 6 items from serial No. 1 to 6.

By reply dated 02/03/2010 the Respondent No. 1 furnished information at Sr. No 1 and as regards 2, 3 & 4 it was informed that request was rejected under section 8(1)(h) of Right to Information Act and as regard 5 and 6 it was informed that case is under investigation. It is seen that Appellant preferred First appeal, however, the same was dismissed. It is to be noted here that FAA observed as under:-

“The DIG Goa is directed to enquire as to why the case i.e. Margao Town P.S. Cr. No. 417/03 has not been finalized for 7 years as alleged by the Applicant.”

It is not known what action has been taken so far. Surprisingly no chargesheet was also filed. This is the most unfortunate part as case is of the year

2003. There is delay and delays have dangerous ends particularly in criminal matters in general. Hope DIG will take necessary action so that such things are not repeated in future and there would be no accusing fingers towards police.

7. Now it is to be seen whether section 8(1)(h) is attracted in this case. Section 8(1) says, " Notwithstanding any thing contained in this Act, there shall be no obligation to give any citizen _____

(h) information, the disclosure of which would impede the process of investigation or apprehension or prosecution of offenders"

There is absolutely no dispute regarding the proposition laid down by the above provision and this Commission would not like to intervene so that investigation may be hampered. However, in the present case the Appellant is the Complainant, the case is of the year 2003 Cr. No. 417/03 dated 18/12/2003. Seven years have been almost passed and still investigation is pending. In this factual scenario it is no wonder if appellant has some doubts or reservations about the investigation. The Appellant is interested in the outcome of his case and as complainant he must know where his case stands as there is considerable delay and even FAA directed DIG as to why the case has not been finalized. The concern of the Appellant who is the author of FIR is natural. Besides as case is presented in the reply sanction is awaited to file chargesheet. That means investigation is complete or almost complete. Under these circumstances it is not known how investigation would be hampered. On the contrary appellant can help if he knows the progress of investigation as he is the Complainant and interested in the out come of the Complaint.

I have also perused the rulings of this Commission relied by the Appellant. It is seen in those Appeals also the present Appellant is the party and similar requests were made. Incidentally PIO is also the same. It is not known if PIO had considered these rulings.

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I am unable to agree with the contentions of the Respondent N. 1 regarding impeding of investigation. In my view the present appeal is liable to be allowed.

8. Appellant contends that denial is malafied so as to deny information and according to him disciplinary proceeding ought to have been initiated. In view of the rulings and more precisely because only sanction was awaited information ought to have been furnished. However, this Commission would give an opportunity to PIO to see that rulings of the Commission are properly followed in the interest of the transparency and to fulfill the mandate of Right to Information Act. As otherwise commission would be constrained to take the other view.

9. It was next contended about delay. Considering the request and reply apparently there is no delay.

10. Respondent No. 1 and 2 should show properly about the applicability of the section 8(1)(h) particularly when the Appellant is the Complainant and very much interested in the progress of the case. Sometimes disclosure of information to the Complainant may turn out to be a blessing in disguise, as complainant may help the investigating Agency in completing investigation and filing chargesheet. It is in the interest of Appellant to extend hand of co-operation in the interest of his own case.

11. In view of all the above, in the factual matrix of this case, the Appellant is entitled for the information sought. Hence I pass the following order:-

ORDER

The Appeal is allowed. The order of FAA is set aside. The Respondent No. 1 is hereby directed to furnish information at point/Sr. No. 2, 3,4, 5 and 6 of Appellant's letter dated 09/02/2010 within twenty days from the date of receipt of this order and report compliance on 13/01/2011 at 10.30 am.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 6th day of December, 2010.

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

