

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Appeal No. 171/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.

Adv. Smt. N. Narvenker for Respondent No.1.

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 letter of the Respondent No. 1 dated 18/01/2010 addressed to the Appellant be quashed, cancelled and set aside; for a direction to Respondent No. 1 to give certified copies of documents under Sr. No. 1, 2, 3, & 6 of letter dated 18/01/2010; for initiating disciplinary action/proceedings against Respondent No. 1 and 2 as per section 20 of Right to Information Act for malafidely invoking section 8(1) (h) of Right to Information Act to deny information and for imposing penalty against Respondents.

2. The facts leading to the present appeal are fully set out in the memo of Appeal. In short it is the case of the Appellant that by letter dated 18/12/2009 the Appellant had addressed a letter to the Respondent No. 1 requesting for information under Right to Information Act 2005('RTI'Act for short) from the Respondent No.1. That the Respondent No. 1 vide letter dated 18/01/2010 addressed to the Appellant informing him that request has been rejected in respect of Sr. No. 1,2, 3,6,7,8,9 and 10 under section 8(1) (h) of RTI Act 2005. Being not satisfied the appellant preferred the Appeal before the First Appellate

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Authority. That the Respondent No. 2 without sending any intimation/notice to the Appellant passed the order almost after 40 days without giving any reasons for the delay. That the Respondent No. 2 partly considered the request regarding Sr. No. 7,8,9 and 10 and rejected in respect of Sr. No. 1, 2, 3 and 6 by upholding the findings of the Respondent No. 1. Being aggrieved by the order of the Respondent No.2, the Appellant preferred the present appeal on various grounds as mentioned 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 upon the Complaint of the Appellant the case under crime No. 49/2008 was registered at Maina –Curtorim Police station and the said crime is under investigation. That the Respondent No. 1, as per section 7(1) of the said RTI Act, had partly rejected the request of the Appellant and conveyed accordingly to the Appellant vide letter dated 16/01/2010 and 18/01/2010. That the appeal filed was partly upheld and PIO/Respondent No.1 directed to furnish information at Sr. 7,8,9 and 10 of the application dated 18/12/2010 and also directed to finalize the pending case in public interest. That the Respondent No. 1 complied the order of First Appellate Authority. It is the case of the Respondent No. 1 that the Appellant had filed FIR in the matter and set criminal law in motion. That once FIR is registered as required under section 154 of Cr. P.C. which the investigating officer is authorized to investigate the said crime under section 156 of Cr.P.C. normally even the Court would enable to interfere with the investigation. It is further the case of Respondent No. 1 that as soon as the appropriate sanction is given by the competent authority I.O. will file the chargesheet. That the request of the Appellant was disposed off within time i.e thirty days and also acted partially in letter and spirit of clause (h) of section 8(1) of the RTI Act. That request to initiate disciplinary action and penalty proceeding is uncalled for and unwarranted.

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3. Heard the arguments. The Appellant argued in person and the learned Adv. Smt. N. Narvenker argued on behalf of Respondent No. 1. Both sides advanced elaborate arguments.

Appellant referred to the facts of the case in detail. According to him information is not furnished. He also referred to the information furnished and attacked the PIO for not furnishing the information. He next submitted that Appellate Authority did not issue him any notice nor hear him. According to him all the information ought to have been furnished. He relied on Kishan Lal V/s Dharmendra Bafna & another (2009) 7 SCC 685 and also 6 rulings of this Commission.

Adv. for Respondent No. 1 also referred to the facts of the case. According to her reply is furnished in time. Some information could not be furnished as the investigation was in progress. According to her there is no malafide intention to deny furnishing of information.

In reply Appellant submitted that information in respect of point No. 8 and 10 is false and incorrect. That there is also delay in furnishing information.

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 the Appellant placed reliance. 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 18/12/2009 sought certain information from the Respondent No. 1 the information sought consisted of 1 to 10 points. It is seen that the Respondent No. 1 by his letter/reply dated 18/01/2010 furnished information in respect of point No. 4 and 5. In respect of point No. 1, 2, 3 and 6 to 10 the request was rejected under section 8(1)(h) of RTI Act as the information called, is part of Colva Police Station Cr. No. 49/08 under

section 419, 465, 408,471 IPC. It was also informed that information of such nature cannot be given being part of an investigation, as it will impede the process of investigation.

The Appellant was not satisfied and hence preferred an appeal. It is seen that Appeal is dated 18/02/2010. The same was received in the office of I.G.P./First Appellate Authority on 27/04/2010 as can be seen from the endorsement on the same. The appeal appears to be disposed on 03/06/2010 though there is no clear date. The Appeal was partly allowed and PIO was directed to furnish information at Sr. No. 7,8, 9 and 10 however, request in respect of 1, 2, 3 and 6 was rejected.

6. The grievance of the Appellant is that information at Sr. No. 1, 2,3 and 6 ought to have been furnished.

The PIO as well as FAA rejected the request under section 8(1) (h) of the Right to Information Act.

Under section 8(1) (h) there is no obligation to give any citizen information which would impede the process of investigation or apprehension or prosecution of offenders. There is no dispute that concerned authority has a right to deny information once section 8(1) (h) of the Act is attracted. In the case before me the case appears to be of 2008, the Cr. No. 49/2008 dated 28/04/2008 and the Appellant is the Complainant. In para 4 of the reply of the Respondent No. 1 it is mentioned as ".....as soon as the appropriate sanction is given by competent Authority, the Investigation officer will file the Chargesheet against the offenders and action taken in this respect will be communicated to the Appellant" This shows that investigation is completed and only sanction is awaited and therefore supply of information is not likely to impede the investigation. On the contrary if at all this information will only enable the Appellant to pursue or take steps in the matter.

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7. Appellant has produced some rulings of this Commission the Xerox copies of which are on record. In the said judgments Appellant as well as Respondents figure. The Commission has ordered to furnish information. It is unfortunate that PIO as well as FAA do not follow the principle laid down in the said orders. In future the PIO should bear in mind the principle laid down so that he can act on the same. In case the same is not followed the same can be construed as motivated and malafide denial of information.

I have perused the order of the First Appellate Authority. It is the contention of the Appellant that he was not given opportunity of hearing. In my view the Appellant and/or Respondents must be heard. Principles of natural justice also require that fair opportunity should be given to the parties.

Again FAA observed that case is 2 years old and there is no need for it to be pending for 2 years. Further S.P. South was directed to finalize the pending case at the earliest in public interest. Unfortunately the said direction is not complied with. No action in that direction.

8. Appellant submitted that Respondent No. 1 and 2 should be penalised by initiating disciplinary proceedings against Respondent No. 1 and 2 for malafidely invoking section 8(1) (h) to deny information.

As observed herein above the rulings of this Commission ought to have been followed by Respondent No.1 and 2, however, the same were overlooked. However Respondent No. 1/PIO should take note that in future he should take note of the rulings of the Commission. Of course the same are not blindly to be followed but should follow on the factual backdrop of each case.

9. Appellant next contended that penalty be levied. It is seen that the appellant's request seeking information is dated 18/12/2009 and reply is dated 18/01/2010. This is in time. After appeal also information is furnished within 15

days. There is no much delay as such. It would not be proper to hold that application of section 8(1) (h) is deliberate and malafide. In any case the PIO should be careful in future.

10. In view of all the above, I am of the opinion that in the peculiar circumstances of the case, the request of the Appellant is to be granted. Hence I pass the following order:-

ORDER

The Appeal is allowed. The Respondent No. 1 is hereby directed to furnish the information/documents under Sr.No.1, 2, 3 and 6 of the application dated 18/12/2009 within 20 days from the date of the receipt of this order and report compliance on 06/01/2011.

The Appeal is accordingly disposed off.

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

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

