

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Appeal No. 172/SIC/2010

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

....

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. Narvekar for Respondent No.1.

J U D G M E N T

(29/11/2010)

1. The Appellant, Shri Jowett D'Souza, has preferred this appeal praying that the letter of the Respondent No. 1 dated 19/02/2010 addressed to Appellant be quashed , cancelled and set aside, that the order dated 27/04/2020 by the FAA (IGP) be quashed, cancelled and set aside; that Respondent No. 1 be directed to give certified copies of documents/information under sr. No. 3, 4, 9, 10 and 12 of the letter dated 23/01/2010; that disciplinary action/proceedings be initiated and penalty be imposed on the Respondent.

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

That the Appellant by letter dated 23/01/2010 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 letter dated 19/02/2010 informed the Appellant rejecting the request of the Appellant in respect of document at Sr. No. 3, 4, 9, 10 and 12 of the Appellant letter under section 2(f) and 8(1)(d) of the RTI Act. Having not satisfied the Appellant preferred an appeal before the FAA/Respondent No. 2. That after hearing the said appeal the Respondent No. 2

dismissed the same by upholding the finding of Respondent No. 1. Being aggrieved by the said order of the Respondent No. 2 the Appellant has preferred this appeal on various grounds as set out in the memo of appeal.

3. The Respondent resists the appeal and the reply of Respondent No. 1 is on record. It is the case of the Respondent No. 1 that the Respondent No. 1 as per section 7(1) of the RTI Act provided the information to the Applicant/Appellant vide letter dated 19/02/2010. That Respondent No. 2 by order dated 27/04/2010 passed in first appeal filed by the Appellant directed the Respondent No. 1 to write to the concerned said parties to ascertain whether the information is to be furnished or not. It is the case of the Respondent No. 1 that Appellant is not the Complainant in Verna Police station Crime No. 3/09 and since the chargesheet is filed under the competent court the matter is sub-judice before the Court. That the Respondent No. 1, further states that information sought by the appellant at point No. 3 and 12 of his application were not provided as such information does not come under the purview of section 2(f) and attracted section 8(1)(d) of RTI Act. That the Appellant cannot claim right to information as a matter of right. That the Appellant is entitled to the information only subject to the provisions of RTI Act and whatever information was to be furnished was provided. That there is no substance in the ground taken by the Appellant and that the appeal is devoid of merit. That there is no delay and there is no cause for initiating disciplinary proceeding and to impose penalty. According to Respondent No. 1 appeal deserves to be dismissed.

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

Appellant referred to the facts of the case and submitted that some information has not been given and regarding some information is false and incorrect. He referred in detail as to which items have not been furnished and which are not correct. He referred specifically to section 2(f) as well as section 8 (1)(d). According to him denial is malafide.

Adv. for Respondent No. 1 argued in similar vein as mentioned in the reply. According to her whatever information is to be furnished has been furnished. She next submitted that M C is dated 18/01/2009 and not 15/01/2009 and she furnished the copy of the same. According to her information as regard to point No. 10 is not available at Verna Police station and that inspection can be given to ascertain the same. Adv. for Respondent refer to the case as a whole and submitted that appeal is liable to be dismissed.

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 the Appellant, vide application dated 23/01/2010 sought certain information from the Respondent No. 1. The information consisted of 1 to 13 points and in the nature of some documents. The Respondent No. 1 by reply dated 19/02/2010 furnished document/information in respect of points No. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 13 furnished. In respect of point No. 3 it was mentioned that point No. 3 it was stated that the information does not come under the purview of section 2(f) of Right to Information Act. Regarding point No. 10 it was informed that information is Nil and in respect of point No. 12 it was informed that request is rejected under section 8(1) (d) of R.T.I Act. This reply is in time.

The grievance of the appellant is that information at Sr. No. 3, 4, 9, 10 and 12 of the letter dated 23/01/2010 is not furnished. According to the Advocate for Respondent No. 1 whatever information, the Appellant was entitled to was provided to him.

6. Now coming to the said points point No. 3 is as under:-

"3. Give me details why there was delay in registering the F.I.R."

to my mind the reason given by Respondent No. 3 regarding point no. 3 appears to be correct. In Dr. Celsa Pinto V/s Goa State Information Commission and anr 2008(4) ALLMR 586 it is observed in para 8 as under. ...4/-

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The definition cannot include within its fold answers to the question "why" which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to Communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudication authorities and cannot properly be clarified as information."

Even otherwise in the guise of information seeking explanations and queries about nature and quality of actions of public authority need not be raised for answer.

Regarding point/Sr. No. 4 the Medical certificate is of 18/01/2009 and the same has been submitted of late. According to Respondent there is no Medical report dated 15/01/2009. According to the Appellant it is not correct and information furnished is false, incorrect and misleading.

Regarding 9 information is furnished. However, according to the Appellant it is false and incorrect.

Regarding Sr. No. 10 the information is furnished, however, according to appellant it is not correct.

Regarding item/Sr. No. 12 the same is rejected under section 8(1)(d) of the RTI Act as the disclosure of which would harm the Competitive position of a third party.

7. The main thrust of the argument of the Appellant is that information at Sr. No. 12 ought to have been furnished to him.

Section 8 reads 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).....

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(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of the third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e)

(f)

(g)

(h)

(i)

(j)

Where disclosure of an information available with the Public Authority would harm the competitive position of a person, same cannot be disclosed .Competitive position could be in trade, commerce, science or any type of intellectual property. Under the Act the disclosure is banned where competitive position of a ‘third party’ is harmed.

The question 12 is as under:-

“12. Give me details as per the agreement of water sports services and park Hyatt Goa Resort and Spa and whether M/s Fun Merchants Pvt. Ltd. Company is a registered Company, if so , copy of the Registration details.”

It is seen agreement is in connection with trade business. The third party is not the party. In fact order of FAA refers to the third party aspect, however, it is not known

what happened thereafter. In my view a balance can be struck and part of information i.e. whether M/s Fun Merchants Pvt. Ltd. company is a registered company can be furnished.

Appellant contends about delay. It is seen that application seeking information is dated 23/01/2010 and the reply is dated 19/02/2010. The reply is in time. Besides there is no malafide intention as the ground mentioned is legal one.

8. Next it was contended by Appellant that the information is incomplete, incorrect false etc. This is disputed by the Advocate for Respondent No. 1. According to Adv. for Respondent No. 1 information furnished is correct.

It is to be noted here that purpose of the RTI Act is per se to furnish information. Of course appellant has a right to establish that information furnished to him is false, incorrect, misleading etc but the Appellant has to prove it to counter opponent's claim. The information seeker must feel that he got the true and correct information otherwise purpose of RTI Act would be defeated. It is pertinent to note that mandate of RTI Act is to provide Information _____information correct to the core and it is for the Appellant to establish that what he has received is incorrect and incomplete. The approach of the Commission is to attenuate the area of Secrecy as much as possible. With this view in mind, I am of the opinion that the Complainant must be given an opportunity to substantiate that the information given to him is incomplete, incorrect, misleading etc as provided in section 18(1) (e) of the RTI Act.

9. In view of the above, the Respondent No. 1 to furnish part of the information in respect of point No. 12. The Appellant should be given an opportunity to prove that the information is incomplete, incorrect, misleading etc. Hence I pass the following order:-

ORDER

The Appeal is partly allowed. The Respondent No. 1 is hereby directed to furnish the information regarding part of point at Sr. No. 12 that is whether Fun Merchants Pvt. Ltd company is a registered company, within 15 days from the receipt of the order.

The Appellant to prove that information furnished is false incorrect, misleading etc.

Further inquiry posted on 10/01/2010 at 10.30 am.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 29th November, 2010.

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

