

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 88/SCIC/2009

Shri Joao C. Pereira,
H. No. 40, Acsona, Utorda,
Mojorda, Salcete –Goa.

..... Complainant.

V/s.

Shri Mangaldas Dessai,
Suptd. of Police (Crime),
Public Information Officer,
Dona Paula, Panaji –Goa.

..... Opponent/Respondent.

Complainant present in person.

Opponent absent. His representative P.I Uday Naik present.

O R D E R

(20/12/2010)

1. The Complainant, Shri Joao C. Pereira, filed the present Complaint praying to order an enquiry against the opponent under section 18(2) of the Right to information Act; to call for records of second Appeal; to recommend for disciplinary action as per service rules and to impose penalty.

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

That the Complainant had addressed several applications under Right to Information Act 2005('RTI' Act for short) to the Public Information Officer ('PIO/Opponent seeking information, certified copies, inspection of files pertaining to investigation of Cr. No. 328/07 conducted under supervision of the opponent. That the opponent deliberately, malafidely, arbitrarily obstructed/denied the information to the Complainant. on almost every application by applying restricted section 8(1)(h) and 8(1) (g) of the Act and further stating that the report under section 173 of Cr. P.C. is yet to be submitted to the Court on Cr. No. 327/07, 328/07 and 241/07 respectively. That the Complainant challenged the refusal of the information by the opponent by filing appeal under the provisions of R.T.I Act. before the Competent Authority. That the Complainant's second appeal bearing No. 263/08, 264/08 and 9/09 etc against the opponent are pending before the Commission. It is the case of the Complainant that the complainant's friend Mrs. Fakirawa Odra had also sought information in the form

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of certified copies on her Cr. No. 327/07 before the opponent which was also rejected under the same reason by the opponent. That Mrs. F.Odra also preferred second Appeal bearing No. 265/2008 which is also pending. It is further the case of the Complainant that the accused mentioned in the Cr. No. 327/07,328/07 and 241/07 are all police officers viz, Dy. S.P. Shri S. R. Golteker, now retired ASI Mohan Kulkarni, lady Head Constable Kum. Sarita Parseker, PI Shri Harish Madkaiker and ex-constable Premanand Hamrosker for serious offences committed by them of forgery, cheating, destroying of records etc to protect the rape accused. That the complainant and one Natividade Fernandes have filed complaints before State Police Complaints Authority, Panaji –Goa against High ranking police officers involved in preparing enquiry reports and investigations on the complaints of Joao C. Pereira and Natividade Feranandes, namely, Shri Arvind K. Gawas, then S.P. Headquarters Shri Shekhar Prabhudessai, then S.P.(South), Dy. S.P. Shri S. R. Golteker, Dy. S.P. Shri Deu Banauliker and P.I. Harish Madkaikar which are registered in the office of S.P.C.A. vide No. SPCA/13/07,SPCA/7/08, SPCA 8/08 and SPCA/11/08 for preparing false, bogus, enquiry, reports and records. The trial of the said complaint is in progress. That the Complainant was shocked and surprised to see that the documents related to criminal investigation which were denied by the opponent under section 8(1) (h) and 8(1)(g) of the RTI Act has already reached in the hands of third parties and the Accused Police officers by unknown means from the office of the opponent which is under investigation of Cr. No. 327/07, 328/07 and 241/07 which are produced by the police officers before SPCA and even exhibited and cross-examined by the Complainant on the said documents which form part of investigation which is still in progress as per opponent's written reply filed before this Commission. That the opponent deliberately, malafidely obstructed, denied the information to the Complainant on whose behalf offence was registered against the police officers. That the opponent has even deliberately manipulated inward and outward register entries from his office. Hence the present complaint.

3. The Opponent resists the complaint and his affidavit is on record. It is the case of the opponent that the application filed is totally misconceived and the same deserves to be dismissed. That no grounds for inquiry under section 18 of RTI Act are made out by the Complainant. That crime Branch is notified as Police Station in terms of section 2(S) of Cr. P.C. vide notification No. 1/15/92-HD(G) dated 3/07/1992 and notification No. 2/2/2002-HD(G) dated 17/01/2005 wherein an officer of the rank of Police Inspector is posted as officer-in-charge of Police station in terms of section 2(0) of Cr. P.C. That cases on transfer to CID Crime Branch are also investigated and final reports are sent under Section 173 Cr. P.C. That some of the cases are investigated by Incharge of Crime Branch or allotted to subordinate officers for investigation either by in-charge or Dy. SP, C.B. who are immediate supervisory officers, who also exercise powers of in-charge of Police station in terms of section 36 Cr. P.C. Since the In-charge of Crime Branch and Dy. S.P. crime Branch are also supervising the investigation. That it is wrong to say that the investigation of Cr. No. 328/07 is conducted wholly under the direct supervision of S.P. Crime. That it is not correct to say that the complainant was denied information deliberately, malafidely by applying restricted sections 8(1)(h) and 8(1)(g). That whenever and wherever possible complainant has been given information from time to time. That investigation of Cr. No. 327/07 is complete and investigation revealed that the complainant has filed a false complaint. That the report under section 173 is submitted to the Hon'ble J.M.F.C. Vasco on 27/11/2009. that in Cr.No. 328/07 the complainant lodged F.I.R. and the final report under 173 Cr. P.C. will be shortly filed in the Court. It is the case of the Opponent that complainant now in order to save from prosecution under section 182 IPC is making wild allegations against the opponent. That the complainant was aware from the beginning that he filed a false complaint and that is why he was seeking information to know the circumstances appearing against him and the possibility of the threatening of witnesses and hampering the investigation was not ruled out and as such information was rightly denied under section 8(1) (h) and 8(1)

(g) of RTI Act. That the final report will be submitted shortly. That Cr. No. 327/07 and 328/07 are transferred to crime branch and are investigated. That the opponent is aware only of the complaint filed in S.P.C.A against Shekhar Prabhudessai then S.P. South who was also PIO for South District. That the Opponent is not aware as to which third party has produced the investigation papers (a) to (f) mentioned in para 7 before S.P.C.A. It is the case of the opponent that the investigation of crime No. 327/07 was with the officer of the South District from 15/12/2007 to 29/09/2008 with various officers and the same is mentioned in detail in paras 17, 18, 19 and 20 of the reply. That since the investigation from 15/12/2007 to 29/09/2008 was with South District and the PIO was S.P. South possibility of seeing information from S.P. South cannot be ruled out. Opponent has also stated in detail about police officers who conducted panchanama, took specimen finger Impression of Fakira Odra etc in detail in paras 22, 23, 24 and 25 of the reply. That C.R.No. 241/07 is not investigated by CID/CB. That the Complainant has misled the Commission by alleging that information was denied to him and that the same was given to the third party. That the said two documents were furnished to the complainant on application under RTI by S.P. Crime. It is further the a case of the opponent that the investigation papers are always in the custody of investigation officer and not in custody of PIO (SP.Crime). Opponent also refers to section 5(4) and 5(5) of RTI Act. That the investigation of the cases is done in a fair and impartial manner by I.O. of CID/CB who were investigating these cases and all of them denied to have given any documents/information to the third party and that explanations of all officers were received. That explanation from scientific Assistant regarding outward number was sought and the explanation was due to oversight. That the Complainant has time and again leveled wild allegations against the opponents as also experts of reputed C.F.S.L and finger print Bureau with the intention of scuttling the process of investigation and prosecution. It is also the case of the opponent that he has 32 years unblemished record of service having to his credit number of rewards and is also a recipient of President Police Medal for

meritorious service and that have appeared before many courts and never came to the adverse notice of the court. In short it is the case of the opponent that no documents is furnished to the third party by any officers of CID/Crime Branch and that person who produced before the S.P.C.A are the best persons to disclose the source of obtaining documents. That complainant also obtained many documents from S.P. South under RTI. That specimen signature and handwriting specimen in Cr. No. 327/07 and 328/07 alleged to be forged by the Complainant are not forged and are of the complainant. According to the opponent complaint is liable to be dismissed.

4. Heard the arguments. The Complainant argued in person and the learned Adv. Shri V. S. R. Dessai argued on behalf of the opponent.

The Complainant referred in detail to the facts of the case. According to him opponent is the PIO of Public Authority. That the Complainant alongwith his friends filed a complaint and the same were registered and investigated at Vasco Police Station. The Complainant referred to various enclosures on record. That the Complainant filed an application under section 6 of the RTI Act. However the information was refused under section 8(1)(h) and 8(1)(g) of the Act and further stating that the report under section 173 of Cr. P.C is yet to be submitted to the court on Cr. No. 327/07, 328/07 and 241/07 respectively. Complainant submitted that though information was not furnished to him certain case papers were furnished to the Police officers who are accused. He referred minutely to all the documents produced and which are on record. He also referred to the orders passed. He also referred on certain rulings the Xerox copies of which are on record. According to him strict action be taken and his prayers be granted.

Adv. for the Opponent also referred to the facts of the case in detail. According to him PIO is in charge of Crime Branch. He also referred to para 5 of the affidavit and also notification on record. He next submitted that investigation at Dona Paula started on 29/09/2008 and that investigation is of Cr. No. 327 and 328. He also

referred to para 17,18,19,20, 21 and 22 of affidavit . Adv. for the opponent submitted that some documents such as Enclosure 6-10 were received by the Complainant much earlier. He referred to encl. 23 and also Exhbt B colly. After referring to various documents on record Adv. for the opponent submitted that S.P.C.A case was filed by the Complainant only and that some documents were given to the Complainant before the case.

In reply the complainant submitted that opponent did not swear the affidavit and it was his duty to swear. He also referred to the Additional documents i.e. page No. 55, 56 to 64. He also queried as to how papers went to S. Prabhudessai.

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 complainant, vide application dated 01/11/2008 sought certain information under Right to Information Act from P.IO/Suptd. of Police (Crime) Panaji –Goa i.e. the opponent herein. The Information consisted of certified copies, queries about opinion and items consisted of (a) to (k). By reply dated 19/11/2008 the PIO/Opponent informed the Complainant that his request for information was rejected under section 8(1)(h), 8(1)(g) and items (b) to (i) under section 8(1)(h). this reply is in time. It is to be noted here that information sought under item No. (a) includes copies of panchanama, reports prepared by I.O.

It appears that complainant preferred appeal before the First Appellate Authority and by order dated 22/2/2008 the First Appellate Authority upheld the decision of the PIO. Thereafter the Complainant preferred second Appeal before this Commission bearing Appeal No. 263/2008 and by order dated 27/01/2010 the appeal was partly allowed and the Respondent No. 1/PIO was directed to provide information sought in the request dated 01/11/2008 at Sr. (a) &(b) within a period of 20 days. In

short the documents sought by the Complainant were not given to him prior to this order dated 27/01/2010 in view of section 8(1)(h). The natural corollary is the said documents could not and ought not to have been given to any third party.

It is to be noted here that complainant sent an application seeking information to the PIO Govt. Exeminer of question Documents, Ramanthpur, Hyderabad and the same was transferred to the opponent and by reply dated 25/11/2008 the complainant was informed that information sought at para (c) cannot be furnished as the investigation is still going on and report under section 173 of Cr. P.C. is yet to be submitted to the court and the request was turned down under section 8 (1)(h) of RTI Act.

One Smt. Fakirawa Odra also had sought certain information pertaining to Cr No. 327/07 and by letter dated 21/11/2008 information was denied under section 8(1) (h) and 8(1)(g) of the RTI Act Appeal preferred before FAA was rejected by order dated 17/12/2008 and second Appeal was allowed and the Respondent No. 1/PIO was directed to provide the information at Sr. No. (1),(b), (c) and (d) within 20 days. This order was passed on 31/03/2010.

6. The grievance of the Complainant is that the documents were denied to him on the ground that investigation is pending but the very documents were furnished to the police officers who were the accused in the said C.Rs. His further contention was though they were police officers they were arrayed as accused and Fakirawa was not given the documents but they were given.

There is absolutely no dispute that if documents are refused to the complainant on the ground that investigation is pending the same cannot be given to the accused or to any other party. It is said injustice arises when equals are treated un equally and unequal equally. In any case this has to be properly ascertained as to how the documents reached to the concerned.

The Complainant has produced certain evidence filed before State Police complaint authority in SPCA case No. 7/2008. I have perused the cross-examination which is at Exhbt c(colly) the said cross-examination was recorded on 27/08/2009. From the tenor of the cross-examination it is seen that the same centred on certain documents and reference of panchanama is also there so also to the finding of finger print expert and report dated 09/09/2008. It is pertinent to note here that this report was denied to Fakirawa on the ground of section 8(1) (h) as mentioned herein above. The sheets containing finger prints of Fakirawa were also exhibited before the said Authority. There is also cross-examination recorded on 29/09/2009 of the CW.1. (complainant herein). As per the said cross-examination Xerox copy of the report dated 21/08/2008 alongwith letter dated 25/08/2008 of the Govt. examiner were produced by Adv. for Respondent and marked as Exhbt R colly by consent. Xerox copy of the police letter dated 04/07/2008 with its annexure are exhibited as Exhbt C colly.

7. It was contended by Adv. for the opponent that some documents were furnished to the Complainant and he referred in detail to the said documents. I have also perused the enclosures 5, 6, 12, 25,26, 27,28 & 30. From the above it is seen that some information/documents were received by the Complainant as pointed by Adv. for the Opponent. According to him some of the documents were with complainant much before 29/09/2009 i.e. day of deposition before S.P.C.A. I have already referred above the order of FAA as well as order in second Appeal.

It is seen from the documents on record, filed by opponent during arguments, application filed by S. R. Golteker dated 09/02/2008 requesting to issue copy of F.I.R and also application dated 28/07/2009 from P.I Madkaiker asking certain copies under Cr. No. 241/07 I have also seen application of the Complainant dated 15/12/2009 and reply dated 11/01/2010 and also 27/01/2010 on record. I have also perused the application of the opponent dated 29/04/2010 and reply dated 07/06/2010 of the complainant and particularly para 5 and 6 of the same.

8. It was contended by Adv. for the opponent that investigation of Cr. No. 327/07 and 328/07 from 15/12/2007 to 29/09/2008 was with south Goa and it was transferred to crime Branch only on 03/10/2008. From the records it appears to be so.

Looking at the application seeking information, replies thereto, orders of FAA and also orders in Second Appeal I find some discrepancy in the sense some documents which were refused to information seekers were used in the cross-examination. Even assuming they were given to the complainant how others got the same is not known. Similarly by then investigation was not complete. From the arguments advanced it appears chargesheet was filed somewhere on 03/03/2010.

To my mind all this need proper inquiry. Truth must come out. Faith in police must not be shaken. Police are the protectors of the society and a shield against evil doors. Their life like Caesar's wife should be above suspicion.

9. In view of all the above, I am of the opinion that an inquiry should be done in order to ascertain as to who furnished the documents and/or how the documents reached the concerned officers, who was responsible for the same etc. considering the fact that these are senior officers the inquiry should be conducted by competent officer. This Commission requests the D.G.P. to conduct the said inquiry.

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

ORDER

Complaint is allowed and D.G.P. to conduct an enquiry regarding furnishing of information/documents to the concerned officers and/or how the said documents reached the concerned officers and to fix responsibility for the same and initiate action against the delinquent officer/officials including lodging of F.I.R and/or be suitably penalised as per law. The inquiry to be completed as early as possible preferably within 3 months.

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Matter posted for compliance on 28/04/2011 at 10.30 am. copy of the order be sent to the D.G.P.

Complaint is accordingly disposed off.

Pronounced in the Commission on this 20th day of December, 2010.

Sd/-
(M. S. kenya)
State Information Commission

