

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Appeal No. 24/SCIC/2011

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

... Appellant

V/s

1) The Public Information Officer,
North District Police Headquarters,
Porvorim, Bardez –Goa.

... Respondent No.1

2) The First Appellate Authority,
Inspector General of Police, PHQ,
Panaji –Goa.

... Respondent No.2

Appellant in person.

Respondent No. 1 and 2 absent.

Adv. H. Naik for Respondent No. 1.

J U D G M E N T

(05/04/2011)

1. The Appellant, Shri Jowett D'Souza, has filed the present appeal praying that the Respondent No. 1 be directed to give information/certified copy of documents at Sr. No. 1 to 13 of the application dated 24/01/2011; that disciplinary action be initiated against Respondent No. 1 and 2 as per service rules and that penalty be imposed on the Respondents.

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

That the Appellant, vide an application dated 24/01/2011, sought certain information under Right to information Act 2005('RTI' Act for short) from the Respondent No. 1/Public Information Officer ('PIO'). That thereafter Appellant wrote a letter dated 27/01/2011 to the Respondent No. 1 and brought to his notice to furnish the information within 48 hours as it comes under section 7(1) of the RTI Act 2005 i.e. "concerned the life of a person". That inspite of this the Respondent No. 1 failed to furnish the information to the Appellant and therefore the Appellant treated the same as deemed rejected. It is the case of the Appellant that Respondent No. 2 failed to hear nor replied to the First Appeal of the Appellant within 48 hours as "the information pertains to the life of a person". That the Appellant treated the First Appeal as deemed rejected. Being aggrieved the Appellant has preferred the present appeal on various grounds as set out in the memo of appeal.

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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 the information sought is in the form of queries and is voluminous. That the Respondent No. 1 has furnished the information in toto vide letter dated 28/01/2011 vide answer No. II. That even otherwise the information sought by the Appellant pertains to the third party. The Respondent No. 1 denies that the information sought concerns the life of a person and the same ought to have been furnished within 48 hours. That no case is made out to furnish the information within 48 hours. Respondent No. 1 denies the grounds of appeal as false and misleading and also denies the case of Appellant as set out in the memo of Appeal.

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

According to the Appellant such information has been furnished earlier and the same does not hamper the investigation.

According to Adv. for Respondent No. 1 information could not be furnished in view of section 8(1(h) of Right to information Act. Adv. for Respondent No. 1 argued on similar lines as per the reply.

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 his application dated 24/01/2011 sought certain information from Respondent No. 1. The information was in the form of queries pertaining to the death of Shri Cipriano Fernandes. By letter dated 27/01/2011 the Appellant informed that information has not been furnished within 48 hours as the same concerns the life of a person. According to the Appellant Respondent No. 1 failed to furnish the information.

From the records it is seen that, by letter dated 28/01/2011, the Respondent furnished the information i.e. the Respondent No. 1 informed the Appellant that information could not be furnished as the investigation is pending.

6. There is absolutely no dispute that information which would impede the process of investigation or apprehension or prosecution of offenders will not be entertained nor will be furnished. The concerned authorities have a right to deny information once section 8(1) (h) is attracted.

However, in the case before the me most of the information touching this case has been furnished. Therefore there is no point in withholding the information.

7. Coming to the information sought by application dated 24/01/2011 information at Sr. No.1 to 4 can be given. Regarding Sr. No.5 only number can be given. It would not be proper to give details as sought. Regarding No.6 the names and addresses of all detained persons/arrested persons/accused brought for inquiry by the Panaji Police Station and were in custody from 6.00 p.m. onwards till 08/01/2011 till 5.00 p.m onwards can be given. Regarding 7, and 8 be given. Regarding Sr. No. 9 and 10 copies concerning this case only be given. Public Information Officer to see that any confidential matter etc figures, the same need not be given.

Regarding sr. No.11 the same is left to PIO and PIO to decide the same strictly in accordance with the provisions of Right to Information Act and also having regard to section 8 & 11 of RTI Act.

Regarding Sr. No. 12 and 13 the same can be given.

8. It is to be noted here as I mentioned herein above the Appellant has received most of the information and I have allowed most of the queries in view of the same. The Appellant on his part to see that he does not ask the same query again and again.

8. In the instant case it is seen that the application is filed first. Thereafter by another letter it is informed that the same is mentioned as "concerns the life of a person" strangely this is referred much later.

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It is to be noted here that under sub-section (1) of section 7 the C.P.I.O or S.P.I.O. has to provide the required information within a period of thirty days. Further under proviso to sub- section (1) the information in cases concerning "life or liberty of a person" shall be provided within 48 hours.

Life and liberty are two of the most important facets of our existence. The RTI Act envisages that the information pertaining to life and liberty of a person should be disclosed urgently. This has to be applied only in exceptional cases and the question as to whether information sought concerns the life and liberty of a person has to be carefully scrutinized in a proper perspective and imminent danger has to be substantially proved.

I have perused some of the rulings of the Central Information Commission on this point. The rule of law now crytalised by various rulings is that the application should be accompanied with substantive evidence that a threat to life exists and this has to be established. This is not the case in the instant case.

10. Normally, appeal to this Commission lies against the order of First Appellate Authority. However, the appellant has directly approached this Commission without waiting the same to be disposed off. This is not proper. There are four cases in which the Appellant has followed this short cut procedure which is not permissible. The Appellant to note that this Commission will not entertain such things in future though this time, in the ends of justice, this Commission is entertaining this appeal. The Appellant to note that provisions of the act are to be complied with strictly.

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

O R D E R

The Appeal is allowed and the Respondent No. 1 is hereby directed to furnish the information in respect of points at Sr. No. 1 to 4, 7, 8.12 and 13. Regarding point at Sr. No. 5, 6, 9,10 and 11 the P.I.O. is directed to furnish information in the light of observation made in para 7 herein above. All this information to be furnished within 10 days from the receipt of this order.

Prayer 2 and 3 are rejected.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 5th day of April , 2011.

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

