

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 249/SCIC/2010

Shri Jowett D'Souza,
H. No. 139,
Ambeaxir, Sernabatim,
Colva,
Salcete - Goa

.... Appellant

V/s.

1) Public Information Officer,
Superintendent of Police,
South District Headquarters,
Margao, Salcete-Goa

.... Respondent No. 1.

2) First Appellate Authority,
Inspector General of Police,
Police Headquarters,
Panaji - Goa

.... Respondent No. 2.

Appellant in person.

Adv. Shri K. L. Bhagat for Respondent No. 1.

Adv. Smt. N. Narvekar for Respondent No.2.

J U D G M E N T **(24.06.2011)**

1. The Appellant, Shri Jowett D'souza, has filed the present Appeal praying that the letter of the Respondent dated 03.06.2010 addressed to the Appellant be quashed, cancelled and set aside; that the Order dated 21.07.2010 passed by Respondent No. 2/First Appellate Authority (FAA) be quashed, cancelled and set aside; that Respondent No. 1 be directed to furnish information to the Appellant as sought by the letter dated 04.05.2010 at Sr. No. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 17. That disciplinary proceedings be initiated against Respondents for malafidely invoking section 8 (1) (h) of the RTI Act and that penalty be imposed on the Respondent.

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

That the Appellant, vide application dated 04.05.2010 sought certain information under Right to Information Act, 2005 ('R.T.I. Act for short') from the Public Information Officer (P.I.O)/Respondent No.

1. That the Respondent vide letter dated 03.06.2010 addressed to the Appellant considering the said request made on 04.05.2010 rejected the requested information/documents at Sr. No. 2 under section 8(1) (h) of R.T.I. Act, 2005, at Sr. No. 3, 4, 5, 6, 10 and 11 the same be treated as 'nil' and as regards 7, 8, 9 and 17 same is rejected under section 2(f) of the R.T.I. Act. Being aggrieved the Appellant preferred Appeal before the FAA/Respondent No. 2. That a wireless note was sent to the Appellant to remain present. However, for want of short time the Appellant moved an application dated 21.07.2010 seeking adjournment. However, without considering the application, Order was passed on 21.07.2010. Being aggrieved the Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondents resist the application and their replies are on record. It is the case of Respondent No. 1 that the Appellant vide his application dated 04.05.2010 sought information/documents on 17 points in respect of Crime No. 49/08 dated 24.02.2008 registered at Colva Police Station and then transferred to Maina Curtorim Police Station for further investigation. That the PIO/Respondent No. 1 furnished reply to the Appellant vide letter dated 03.06.2010 wherein information is in respect of point No. 1, 12, 13, 14, 15 and

16 were provided to the Appellant. That as regard point No. 1 request was rejected as per the provisions of section 8(1) (h) of the RTI Act since the disclosure of the information sought would impede the process of investigation. That as regard point No. 3, 4, 5, 6, 10 and 11 the Appellant was informed that the information was 'nil'. That as regard point No. 8, 9 and 17 information could not be furnished as the information sought by the Appellant was not coming under the purview of section 2(f) of the RTI Act, 2005. That the Appellant has to seek specific information. That it is well settled by series of decisions given by the Hon'ble Chief Information Commission and also Commission that question such as 'whether', 'what', 'how', 'why' need not be answered. That the PIO has furnished the information in available form. That the Appellant preferred the First Appeal and the FAA by Order dated 21.07.2010 upheld the decision of the PIO. It is the case of Respondent No. 1 that information has been furnished to the Appellant and the same is furnished within specified time limit. That the allegations made by the Appellant in the various grounds raised by the Appellant are denied being baseless. That whatever information was available was furnished to the Appellant. That there is no malafide intention whatsoever on the part of the PIO and that PIO has properly applied his mind while applying provisions 2(f) of the RTI Act. It is also the case of the Respondent No. 1 that the Appellant has sought the said information in his own interest and not in public interest. That under the provisions of RTI Act the applicant is entitled to receive information only in the larger public interest and not in his own

interest. According to Respondent No. 1 Appeal is liable to be dismissed.

It is the case of Respondent No. 2 that the Appellant was given an opportunity for making out his case against decision of PIO. However, he failed to do so and sought the adjournment beyond the prescribed time limit for the disposal of the Appeal. That it was a deliberate tactic on the part of the Appellant to unnecessarily involve the FAA in delaying the disposal of First Appeal. That the FAA was compelled to decide the First Appeal on merits. That the Order was passed on merits after considering the material on record. According to Respondent No. 2 Appeal is to be dismissed.

4. Heard the arguments. Appellant argued in person and the Ld. Adv. Shri K. L. Bhagat argued on behalf of Respondent No. 1 and Adv. Smt. N. Narvekar argued on behalf of Respondent No. 2.

Appellant submitted that the reply filed by Respondent No. 1 could not be looked into. He referred in detail to the facts of the case and about information furnished, etc. He also referred to various orders. According to him same information is not asked again and what is asked is different.

5. Adv. Shri Bhagat submitted that reply can be filed at any moment and the same has to be considered. He next submitted that there is no public interest involved in what the Appellant is seeking. However, there is only vested interest. He also submitted that

application seeking information is not properly worded and whatever information was available has been furnished.

Adv. Smt. N. Narvekar also submitted on similar lines as per his reply.

6. 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, vide application dated 04.05.2010 the Appellant sought certain information from the Respondent No. 1. The information consisted of 17 items/points. It is seen that vide reply dated 03.06.2010 certain information was furnished. With regard to point No. 3, 4, 5 and 6 it was informed that information was nil. As regards point No. 7, 8 and 9 it was informed that the same does not come within the purview of section 2(f) of R.T.I. Act and information regarding certain points was not furnished in view of section 8(1) (h) of RTI Act. Being aggrieved the Appellant preferred First Appeal before Respondent No. 2. By Order dated 21.07.2010 Respondent No. 2 dismissed the Appeal holding that reply of the PIO was correct.

Being aggrieved by the order of F.A.A. the Appellant has landed in the Commission.

7. Coming to the application, request regarding point No. 2/Sr. No. 2 is rejected under section 8(1) (h) of the R.T.I. Act. There is no dispute with the proposition that investigation which would impede

the process of investigation, apprehension or prosecution of offenders is to be denied or withheld. However, it is to be noted here that mere existence of any investigation process cannot be a ground for refusal of information. I have perused the copy of the judgments relied by the Appellant and particularly Appeal No. 171/SIC/2010 which incidentally pertains to Cr. No. 49/2008. In view of this there is no harm if copies of call letters as asked are furnished, if any.

Regarding item No. 3/Sr. No. 3 and item No. 6/Sr. No. 6 the information appears to be nil and the same is not furnished. Under R.T.I. non-existing information cannot be furnished. Whatever information is available is to be furnished.

Coming to item No. 4 and 5 the same have not been properly worded and rightly not furnished.

To my mind the PIO can furnish information to the effect that whether duplicate R.C. Book was attached and copy of the attachment panchanama after deleting the names of panchas and their signature can be furnished. If chargesheet is already furnished then panchanama can very well be given.

Regarding item No. 5 if other miscellaneous documents have been attached then copy of attachment panchanama could be given in the same fashion as mentioned above.

It is to be noted here that these two items are not at all concerned with "forged signature" nor could be construed as such.

Regarding item No. 7/Sr. No. 7 information to the extent 'whether the Investigation Officer who is handling the investigation in Cr. No. 49/08 at Maina Curtorim Police Station has recorded the statement of the owner of the Recovery Yard only' can be given.

Regarding 8 and 9, I do agree with the P.I.O as well as F.A.A. when they state that the same does not come under section 2(f) of the R.T.I. Act. It is to be noted here that an information seeker is entitled to the information which is accessed by the Public Authority.

Regarding point No. 10 and 11 the information given is Nil. As observed above, non-existent information cannot be furnished.

Regarding point No. 17 the reply furnished appears to be correct. Even otherwise the details cannot be furnished at this stage.

8. Looking at the factual backdrop of the case, to my mind, Appellant can be given some of the information that is available with the Public Authority.

9. In view of the above, I am of the opinion that the request of the Appellant is to be partly allowed. Information in respect of point No. 2/Sr. No. 2 can be furnished. Regarding 4, 5 and 7 the same be furnished as observed in para 7 above. Hence, I pass the following Order:-

ORDER

The Appeal is partly allowed. The Respondent No. 1 is directed to furnish the information to point No. 2/Sr. No. 2 and 4, 5 and 7 as

observed in para 7 above within twenty days from the receipt of the order and report compliance.

The Order of F.A.A. to that extent is set aside.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 24th day of June, 2011.

Sd/-

(M. S. Keny)

State Chief Information Commissioner

