

# GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 252/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 09.04.2010 addressed to the Appellant be quashed, cancelled and set aside; that the Order of Respondent No. 2/First Appellate Authority (FAA) dated 21.07.2010 be quashed, cancelled and set aside; that Respondent No. 1 be directed to furnish information to the Appellant as sought by letter dated 13.03.2010 at Sr. No. 1, 3, 4, 5, 6 and 7. That disciplinary action be initiated against Respondent No. 1 and 2 and penalty be imposed on the Respondents.

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

That the Appellant, vide application dated 13.03.2010 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 09.04.2010 addressed to the Appellant considering the said request made on 13.03.2010 rejected the documents at Sr. No. 1, 3, 4, 5, 6 and 7 of the Appellant's letter under section 8(1) (h) of R.T.I. Act, 2005. That the Respondent No. 2 served a wireless note/message on the Appellant dated 20.07.2010 at around 17:55 hrs. fixing the hearing before the Respondent No. 2 at around 12:00 noon which is less than 24 hours in advance. That the Appellant moved an application dated 21.07.2010 seeking the adjournment of the hearing before Respondent No. 2. That the Respondent No. 2 never bothered to decide on the said application for adjournment but instead passed the order on 21.07.2010. Being aggrieved by the said letter of the Respondent No. 2 the Appellant has filed the present Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and their replies are on record. It is the case of Respondent No. 1 that the application of the Appellant was received and by letter dated 09.04.2010 the Respondent No. 1 furnished information in respect of point No. 2, 4, 5 and 8 and as regards point No. 1, 3, 6 and 7, rejected the request under section 8(1) (h) of RTI Act. That the disclosure of the said information would impede the process of investigation before the trial Court and, therefore, the information was refused. That the grounds

raised are denied being not correct. It is further the case of the Respondent No. 1 that the information which can be furnished to the appellant has been furnished to him within the stipulated time limit and the information at Sr. No. 1, 3, 6 and 7 has been rightly refused to the Appellant under the provisions of section 8(1) (h) of the RTI Act. That the Appeal preferred by the Appellant before the Respondent No. 2 has been rejected thereby upholding the decision of PIO. According to the Respondent No. 1 the present appeal is liable to be dismissed.

It is the case of Respondent No. 2 that the Appellant had preferred the Appeal against the decision given by Respondent No. 1. That the First Appeal was heard on 21.07.2010. That the Appeal was disposed. That the Appellant was not the Complainant in the said Crime No. That the Order passed by Respondent No. 2 is just and proper.

4. Heard the arguments. Appellant argued in person. Learned Adv. Shri. K. L. Bhagat argued on behalf of Respondent No. 1 and the learned Adv. Smt. N. Narvekar argued on behalf or Respondent No. 2. All the three have advanced elaborate arguments.

Appellant submitted that accused was involved in his case, forging documents, etc. That he uses Police officers to get NOCs and that accused was involved in sword case. According to him chargesheet is filed and accused discharged and that case is pending. Adv. Shri Bhagat argued on similar lines as per the reply. According to him information with respect to point 2, 4, 5 and 8 has been

furnished and 1, 3, 6 and 7 was refused under section 8(1) (h) as trial was pending.

During the course of arguments Ld. Adv. Smt. N. Narvekar referred to the power of Appellate Authority in deciding the matter even though time limit is given. According to her there cannot be disciplinary proceedings against Respondent No. 2 and that referring to the subject matter she submitted that the matter is under Arms Act and that Appellant is not a party to the proceedings.

In reply Appellant submitted that notice of Appeal was sent after 45 days and that FAA does not have time to hear the matter. That notice was sent late. Appellant admits that he is not the complainant in this case. However, the concerned accused is accused in his case. He relied on the order of State Information Commission which is on record.

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 by application dated 13.03.2010 the Appellant sought certain information from Respondent No. 1. By reply dated 09.04.2010 the Respondent No. 1 submitted part of the information and information in respect of point at Sr. No. 1, 3, 6 and 7 was rejected under section 8(1) (h) of the RTI Act as it would impede the prosecution case before the trial court. Being aggrieved the Appellant preferred Appeal before FAA and by order dated

21.07.2010 the FAA upheld the reply of PIO and the Appeal was dismissed.

The grievance of the Appellant is that the information sought by him ought to have been furnished.

6. The request of the Appellant is rejected as the case is pending trial. Normally, at the juncture where prosecution proceedings have been initiated and are subject matter of trial, the disclosure of information would impede the process of prosecution of offenders. The only thing that is to be seen is what information can be granted by the Respondent No. 1.

Coming to the information sought, the information in respect of point No. 2, 4, 5 and 8 has been furnished. By present Appeal Appellant seeks information in respect of point No. 1, 3, 4, 5, 6 and 7.

Regarding point No. 1/Sr. No. 1 date of arrest and date of release on bail only can be granted.

Regarding point No. 3/Sr. No. 3 it would not be proper to grant the information at this stage since trial is pending.

Regarding point No. 4 and 5 information is furnished however, date and time of raid, if any, can be furnished.

Regarding 6 and 7 the request is to be rejected since the trial is pending.

7. Looking at the factual backdrop of this case, to my mind Appellant can be given some of the information as observed above.

8. Appellant contends about appeal being not disposed in time and also about not giving an opportunity of hearing. This is disputed by Adv. Smt. Narvekar.

It is to be noted here that opportunity of presenting the case of the party is to be given. Principles of natural justice requires the same. Again appeal is to be disposed within 30 days or within 45 days with reasons.

Appellant also contends about penalty. It is to be noted that F.A.A. is not covered by the penal provisions of the Act.

9. In view of the above, the request of the Appellant is to be partly allowed. Information in respect of point No. 1/SR. No. 1 can be given to the extent of date of arrest and date of release on bail only; in respect of point No. 4 date and time of raid can be furnished as observed in para 6 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. 1 and 4 as observed in para 6 hereinabove 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 24<sup>th</sup> day of June, 2011.

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







