

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Appeal No. 261/SIC/2010

Cyril Fernandes,
Power of Attorney Holder of
Vernon Fonseca, 405 B “Symphony”
Lokhandwala Complex,
Andheri, Mumbai

…Appellant.

V/s

1) The Public Information Officer
O/o Director of Panchayats,
Junta House, Panaji-Goa

… Respondent No.1.

2) First Appellate Authority,
Director of Panchayat,
Junta House, Panaji-Goa

…Respondent No.2.

Appellant in Person
Respondent absent

JUDGEMENT
(28/06/2011)

1. The Appellant, Shri Cyril Fernandes P/A of Vernon Fonesca has filed the present Appeal praying that Respondent No.1 be directed to furnish certified copy of the reply given to the show cause, as sought by the Appellant.

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

That the Appellant, vide his application dated 17/08/2010 sought certain information under Right to Information Act, (R.T.I. Act for short), from the Public Information Officer (P.I.O.)/Respondent No.1. That on 26/08/2010 the P.I.O. informed the Appellant that the said Secretary had replied to the show cause notice and that the matter her is lying with the Directorate of Panchayat for further inquiry. That the Appellant sought the copy of the said reply on 1/09/2010 under

R.T.I. Act. That the Appellant was informed vide reply dated 07/09/2010, that inquiry in the said matter is in progress hence certified copy of the reply submitted by Village Panchayat, Secretary, Shri Vippin Korgaonkar as desired by the appellant cannot be given. That thereby denying the information. Being not satisfied the Appellant appealed to the Authority on 28/09/2010 i.e the Respondent No.2. By order dated 21/10/2010, the F.A.A./Respondent No.2 upheld the stand taken by P.I.O. Being aggrieved by the said order the Appellant has preferred the present appeal on the grounds as set out in the memo of appeal.

3. The Respondent resists the appeal and their replies are on the record. It is the case of the Respondent No.1 that the application dated 17/08/2010 was filed by the Appellant. That by reply dated 26/08/2010, the Respondent No.1 informed the applicant that Village Panchayat Secretary, Shri Vipin Korgaonkar has submitted his reply to the show cause notice issued to him and the same is placed before the Director of Panchayat for further necessary action in the matter. That the Appellant filed another application dated 01/09/2010, before the P.I.O./Respondent No.1 seeking information. By reply dated 07/09/2010 the Respondent No.1 replied that inquiry in the said matter is in progress hence certified copy of the reply cannot be given at this stage. That being aggrieved the Appellant preferred the appeal before the First Appellate Authority. That the appeal was disposed off vide order dated 21/10/2010 upholding the decision of the P.I.O.

It is the case of the Respondent No.2 that Appellant had filed the appeal and that the same was disposed off by order dated 21/10/2010. That the information was not furnished in

view of the provision of section 8(1) (i) of the R.T.I. Act. That the Appellant was informed that once the inquiry in the matter is complete, the copy of the reply along with outcome of the inquiry would be informed to him, if he so desires. It is the case of the Appellant that there is no deliberate intention on their part to deny the information sought by the Appellant, however since disciplinary proceedings in the matter is in progress it was decided that furnishing of the reply submitted by the village Panchayat, Secretary Colvale at this stage was not proper. That the inquiry is in progress. According to the Respondent No.2 appeal is to be dismissed.

4. Heard the Appellant and the Respondent No. 1. Written arguments of Appellant are on record. 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 1/09/2010, sought certain information i.e certified copy of reply submitted by Shri Vippin Korgaonkar to show cause notice sent to him as per reply dated 26/08/2010, which is placed before the Director of Panchayat for necessary action. By reply dated 07/09/2010 the Respondent No.1 informed that inquiry is pending hence certified copy of the reply submitted by village Panchayat Secretary, Shri Vippin Korgaonkar as desired by him cannot be given at this stage.

It is pertinent to note that from the scheme of the R.T.I. Act, it is clear that R.T.I. Act ensures maximum exemptions consistent with constitutional provisions prescribing at the same time confidentiality of sensitive information. Ordinarily all

information should be given to the citizen but there are certain information protected from disclosure. Section 8 is an exception to the general principles contained in the Act. This provision exempts disclosure of information or apprehension or prosecution of offenders.

It is seen that Appellant had filed a complaint to the Vigilance Department and in pursuance of the same the show cause was issued. What the Appellant wants to know is perhaps the progress of the case.

5. Section 8(1) (h) lays down as under:-

8(i) Exemption from disclosure of information (1) notwithstanding anything contained in this Act, there shall be no obligation to give any citizen.....

.....
.....

(h) Information which would impede the process of investigation or apprehension or prosecution of offenders.

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 an investigation process cannot be a ground for refusal of information. Both P.I.O. and F.A.A held that inquiry is in progress and as such information was refused, however, they did not show satisfactorily as to why the release of such information would come in the way or hamper progress of the case. such reason should be germane and the view of the

process being hampered should be reasonable and based on some material.

Mukush Bhasmay v/s. CST Mumbai (No.CIC/DK/A/2006/00274 dated 15/12/2006). This case was about action taken on corruption complaint to show all files. The Railways had maintained that inquiry is under process. However, the Commission directed to show to the applicant all files and documents relating to the inquiry for such construction.

I have also perused the ruling in the First Appellate Authority and joint Secretary to Government and Anr.V/s. Shri Vinay Mohan Lal (writ petition No. 8384 of 2010 High Court of Bombay dt. 30/11/2010), relied by the Appellant.

It is pertinent to note that action was initiated on the complaint of the Appellant and therefore the same cannot be denied to him. On the contrary the same may be useful for deciding the issue in question.

6. I have also perused some of the documents on record. It is seen as per the noting about the information furnished. In any case, in the factual backdrop of this case, I am of the opinion that information as sought can be furnished.

7. In view of the above, I pass the following order:-

ORDER

The appeal is allowed. The order of the F.A.A. is set aside the Respondent No.1 is hereby directed to furnish the information to the Appellant as per his application dated

1/09/2010 within 20 days from the date of receipt of this order
and report compliance

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 28th day of June , 2011.

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

