

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 254/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 **(05.08.2011)**

1. The Appellant, Shri Jowett D'souza, has filed the present Appeal praying that the letter of the Respondent No. 1 dated 13.05.2010 addressed to the Appellant be quashed, cancelled and set aside; that the Respondent No. 1 may be directed to furnish the information to the Appellant as sought on the letter dated 20.04.2010 at Sr. No. 5, 6, 7, 8, 9, 10, 11, 12, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32 and 33; that the Order dated 21.07.2011 passed by First Appellate Authority/Respondent No. 2 (FAA) be quashed, cancelled and set aside; that disciplinary proceedings be initiated against Respondent No. 1 and 2 and that penalty be imposed on the Respondents for causing inconvenience and loss of precious time.

2. The brief facts leading to the present Appeal are as under:-
That the Appellant vide an application dated 06.03.2010 sought certain information under Right to Information Act, 2005 ('R.T.I. Act'

for short) from the Public Information Officer(PIO)/Respondent No. 1. That the Respondent No. 1 vide letter dated 13.05.2010 considering the request made on letter dated 20.04.2010 rejected the requested information/documents by stating that it is covered under section 2(f) of the RTI Act, 2005 at Sr. No. 5 to 12, 18 to 29, 30, 32 and 33. That the Respondent No. 2 served a wireless note/message on the Appellant dated 20.07.2010 at around 17:55 hours fixing the hearing before Respondent No. 2's office at around 12:00 noon which is less than 24 hours in advance and, therefore, the Appellant moved the 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 made a mere reference on the Order dated 21.07.2010 at the first page, 2nd part of the Order. Being aggrieved by the said letter and Order the Appellant has preferred the present appeal on various grounds as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and the replies of the Respondents are on record. In short, it is the case of Respondent No. 1 that Maina Curtorim Police Station Crime No. 52/05 under section 465, 466, 467, 468, 120-B IPC was registered at Maina Curtorim Police Station on 10.08.2005 and investigated by various officers of South Goa District. That the said Crime No. 52/05 was transferred to Crime Branch on 29.10.2008 and various officers of Crime Branch investigated the same. That the particulars showing the names of the officers of South District and Crime Branch who investigated the case is enclosed. That Shri Shamba Sawant, Dy. Superintendent of Police, CID, SB, Investigating Officer in this case formed an opinion and submitted report under section 173 of CrPC to the Court of Hon'ble District Magistrate, Margao on 25.05.2010 vide chargesheet No. 22/2010 dated 25.05.2010. That since the case has been chargesheeted and the matter is sub judice and it is within the

competence of the Hon'ble District Magistrate to take cognizance in terms of section 19 (1) (b) of Cr PC. That the investigation is done as per the provisions of Cr PC and it is for the Court to furnish copies of chargesheet alongwith documents to the accused person in this case under section 207 of CR PC. That during the year 2005 the Appellant has filed as many as 51 applications out of which 46 are under RTI Act, 2005 and 5 are non-RTI out of which in 31 applications the Appellant was furnished the information whereas in 2 applications the information sought for is rejected. That 12 applications were transferred under section 6(3) of RTI and one application is 'others'. That the Appellant has inspected the entire file together with the case diaries maintained under section 122 Cr PC on 01.02.2009 and 19.05.2010. As such the Appellant is fully conversant with the facts of the case and the documents that are now filed. That the case papers of Cr. No. 52/05 are sent to Maina Curtorim Police Station on 31.05.2010 and that being the case presently the PIO for all purpose is SP, South was the Registrar, District and Sessions Court, Margao. That the Complainant/appellant is also sent intimation as required under section 173(2) (ii) Cr PC. It is further the case of the Respondent N. 1 that the application requesting information of the points from Sr. No. 1 to 34 was received by the Respondent No. 1. That the information was rightly denied which was not coming within the purview of section 2(f) of the RTI Act and the information which was not transferred in the file and which was not in material form. That the Respondent No. 1 has acted correctly in the provisions of RTI Act and that the information which was available was furnished. That the Respondent No. 1 denies specifically the grounds set out in the Memo of Appeal. According to the Respondent No. 1 the information available and permissible under the provisions of RTI Act was furnished. That the information which did not come under the purview of definition of section 2 was not furnished. That the Appellant has inspected the file pertaining to Cr. No. 52/05 together with case diaries on 01.12.2009 and 19.05.2010. That the Respondent No.1 denies that

he has deliberately and malafidely denied information. That the case has been chargesheeted in the Court of Law and the matter is sub judice. According to the Respondent No. 1 the Appeal is liable to be dismissed.

4. It is the case of Respondent No. 2 that the Appellant had preferred First Appeal. That the said Appeal was taken for hearing on 21.07.2010 and that both, the Appellant and Respondent No. 1, were present for hearing. That on the date of hearing the appellant had filed another application seeking adjournment. That on going through the relevant documents and after considering the first Appeal and the Appellant on merits and submissions put forth by both, the Appellant as well as Respondent No. 1, the said First Appeal was dismissed by order dated 21.07.2010 thereby upholding the reply of PIO/Respondent No. 1.

According to Respondent No. 2 present Appeal deserves to be dismissed.

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

Appellant referred to the facts of the case in detail. According to him information was sought by application dated 20.04.2010. According to him the ruling relied is not applicable. He next submitted that he is the Complainant. He also referred to some of the orders, about 9, which are on record. Appellant relied on the same. He also submitted that all these matters are decided earlier. He next submitted that Crime Branch has denied the information. He also submitted that Leader of Opposition brought this fact in the Assembly. According to him there is nexus between Police and Bank, particularly, Crime Branch. After elaborating on the information sought Appellant submitted that his request be granted.

During the course of his arguments Adv. Shri Bhagat submitted that Appellant is not entitled and he also referred to the reply given to the applicant. He referred in detail to the various items mentioned in the application seeking information. According to him point No. 2 cannot be granted the way it is asked. He next submitted that information should be specific. According to him "whether", "why", etc. are not to be asked under RTI. Adv. Shri Bhagat referred in detail to the reply furnished by the Respondent No. 1. He also justified the stand that the same does not come under section 2(f). According to him Appellant should be specific. He next submitted that if the Appellant has received the information earlier he cannot seek the same again. According to him, the Appeal is liable to be dismissed.

6. Advocate for Respondent No. 2, Smt. N. Narvekar submitted that application dated 21.07.2010 seeking the adjournment before FAA. According to her matter was posted on merits. She next submitted that Appellant had sought adjournment. She next submitted that FAA rightly upheld the Order passed by PIO. That detailed order has been passed and the order passed is just and proper and that matter was posted on merit considering all the points. Regarding disciplinary proceedings the Commission does not have powers.

In reply the Appellant submitted that it is his right to ask the information. He next submitted that section 2(f) has been decided. Advocate for Respondents also submitted that replies be considered. Advocate for Respondent next submitted that there is no malafide intention.

7. 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 20.04.2010 sought certain information. The information consisted of 34 points i.e. 1 to 34. By reply dated 13.05.2010 the PIO/Respondent No. 1 furnished the information. The grievance of the Appellant is that information at Sr. No. 5, 6, 7, 8, 9, 10, 11, 12, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32 and 33 is not furnished. Being not satisfied the Appellant preferred an appeal before the First Appellate Authority. By Order dated 21.07.2010 the F.A.A. upheld the order of the PIO and dismissed the Appeal.

It is seen that most of the points seeking information are refused on the ground that the same does not come within the purview of section 2(f) and hence denied.

8. It would not be out of place to mention here about the definition of information. Under section 2(f) "information" means any material in any form including records, documents, memos, contracts, reports, papers, samples, models, data, material held in any electronic form and information relating to any private body which can be accessed by a Public Authority under any other law for the time being in force. In an old case (AIR 1957 Punjab 226) the Punjab High Court explained 'information' as synonymous with knowledge or awareness in contradistinction to apprehension, suspension or misgiving.

It is to be noted that the term "record" for the purpose has been defined widely to include any documents, manuscript, film, etc. Under clause 2(j) "The Right to Information" means the right to information accessible under this Act which is held by or under the control of any Public Authority. It is to be noted that section 2(j) provides only information held by or under the control of any Public Authority. It does not mean that any information seeker can solicit opinion from the PIO of a Public Authority.

9. I have perused the documents produced by the Respondent No. 1. It is seen that various applications were filed. At one stage

Appellant also sought copy of the chargesheet. Some of the information is sought at one stage or other. Again the relevant material is produced alongwith the chargesheet. Appellant was also given inspection of the relevant file.

In any case I shall refer to the information sought by the Appellant.

Regarding point at Sr. No. 5 the information can be furnished as to "whether Hyundai Acccent car No. GA-02-J-8268 was attached and if so copy of attachment panchanama can be given.

Regarding point No. 6 information can be furnished only as to 'whether Duplicate R.C. Book was attached?'

Regarding point at Sr. No. 7, 8 and 9 information can be furnished only as regards as to whether Surrender Letter dated 06.08.2004; documents i.e. original Irrevocable Power-of-Attorney and D.P. Note and Original Loan Agreement were attached and if attached, attachment panchanama.

Regarding point/Sr. No. 10 is general in nature and rightly refused.

Regarding point/Sr. No. 11 information could be furnished and in respect of point at Sr. No. 12 information can be furnished only as to 'whether the statement of the owner of Recovery Yard at Manora-Raia was recorded?'

It is to be noted here some of these questions are mere repetitions and have been answered earlier. Besides, it is seen from the documents produced that copy of the chargesheet has been furnished. Of course I have allowed the above information as the same figured earlier. However, Appellant should not ask the same question again and again. Again inspection was also given to the Appellant.

10. Regarding point No. 18, 19 and 20 the PIO has already replied. Besides chargesheet is filed and as per records copy of chargesheet is furnished to the Appellant.

Regarding point No. 21 the same is rightly rejected. Regarding 22 "Whether I.O. summoned/issued call letter to Nora Fernandes, Collection Manager of I.C.I.C.I. Bank' can be replied and call letter if any be furnished.

The Appellant should note that in view of point at Sr. No. 21 this query does not arise.

Regarding point No. 23/Sr. No. 23 and point No. 24/Sr. No. 24 are in respect of mobile call details. Normally these details regarding phone attract exemption under section 8 (1) (c) of the R.T.I. Act.

Regarding point No. 25/Sr. No. 25 the same does not arise as chargesheet is furnished. Regarding point No. 26 the same can be replied. It is to be noted here that from the records furnished this query was asked earlier also.

Regarding point/Sr. No. 27 "Whether any arrests have been effected" can be replied.

Regarding point/Sr. No. 28 the PIO to reply if any information is available with them in material form.

Regarding point/Sr. No. 29 "Whether specimen signatures and handwriting from accused persons was/is taken" can be replied.

Regarding point No.31, 32 and 33 the same have been rejected by P.I.O. Considering the nature of queries I have to agree with the same.

11. It is seen that chargesheet is filed, information has been furnished from time to time. A number of applications were filed right from 2006, 2007, 2008 onwards. In any case chargesheet is also filed as per records and this is also admitted by the Appellant in ground No. V of this Memo of Appeal. Needless to say that chargesheet contains all the requirements on which prosecution relies.

12. I have perused the entire bulk of annexures filed alongwith the reply. I have minutely gone through the same. Various questions were asked such as about recovery yard, Hyundai Accent car being attached, about inability of Police bringing the car, etc. I have also perused the application wherein information was not collected as per records.

No doubt Appellant herein may be having a genuine grievance about his case. He has filed several applications may be 41 on the same issue or allied issue. Some of them are before this Commission. Under R.T.I. any information seeker will get information. How to use this is intelligence of an information seeker. Repeated applications asking almost the same queries may add to the knowledge but cannot undo the wrong, if any, which he perceives has been done to him. R.T.I. can help any information seeker to get records, however, redressal of grievance is in a different forum.

13. Adv. Shri K. L. Bhagat contends that the information that is asked cannot be granted the way it is asked. I do agree however, as I observed above, most of the information has been furnished in one way or other at some point from 2006/07 till date.

Adv. Shri Bhagat next contends that Appellant should be specific and he relied on the reply. No doubt any person seeking information must be specific and clear.

14. Appellant contends that Respondent No. 2 did not give him fair opportunity. This is disputed by Adv. Smt. N. Narvekar. According to her, Appeal is decided on merits.

I need not refer to this aspect in detail, however, principles of natural justice require that a fair opportunity should be given to the parties.

15. Appellant contends about penalty. Considering the date of application and the reply of the Respondent No. 1, the same is within time. Appellant further contends that the application of section 2(f) is malafide. Good or bad it has the backing of law and therefore it is not possible to hold the same as malafide.

16. In view of the above, the request of the Appellant is to be partly allowed. Information in respect of points as mentioned in para 9 and 10 hereinabove can be furnished. 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. 5, 6, 7, 8, 9, 11, 12, etc. as observed in para 9 and 10 hereinabove within 20 days from the receipt of the order and report compliance.

The Order of FAA to that extent is set aside.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 05th day of August, 2011.

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