

# **GOA STATE INFORMATION COMMISSION AT PANAJI**

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

Appeal No. 147/SCIC/2011

Shri Radhacrishn U. Somji,  
Inspector, Legal Metrology,  
Somarpeth,  
Bicholim - Goa

.... Appellant

V/s.

1) The Public Information Officer,  
V. R. Naik,  
Assistant Controller, Legal Metrology,  
O/o. the Controller, Legal Metrology,  
Near Municipal Garden, Panaji - Goa

... Respondent No. 1.

2) The First Appellate Authority,  
I/C Controller, Legal Metrology,  
O/o. the Controller, Legal Metrology,  
Near Municipal Garden,  
Panaji - Goa

.... Respondent No. 2.

Appellant in person

Respondent No. 1 in person.

## **J U D G M E N T** **(02.11.2011)**

1. The Appellant, Shri Radhacrishn U. Somji, has filed the present Appeal praying that records and proceedings be called for and the Appeal be allowed directing the Respondent to furnish the information sought by the Appellant.

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

That the Appellant, vide letter 25.04.2011 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 at Sr. No. 3 of the said application the Appellant sought certified copies of Academic Confidential Reports of about five officers. That the said information was refused without assigning any reasons by the Respondent. The Appellant thereafter preferred Appeal before the First Appellate Authority. That the same was rejected by letter dated 14.06.2011 stating that he could not hear the same. Being aggrieved by the said order as well as non-supply of information the Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondent resists the Appeal and the reply of the Respondent is on record. In short, it is the case of the Respondent that Appellant made an application to the Respondent No. 1 as Public Information Officer asking for certified copies of documents/letters/orders/reports, etc. That in response to the said application the Respondent No. 1 immediately reacted to collect the information as asked by the Appellant from various sub-offices of the Department as the information was available in different sub offices and was also voluminous. That the information collected from various sub offices was to be sorted from the compiled records, files, etc. which amounted to 4430 pages. That the same were required to be certified and were certified by Respondent No. 1. That the letter to that effect to collect was made to the Appellant dated 18.05.2011. That the information comprising of 4430 pages was supplied to the Appellant vide letter dated 24.05.2011. That it was mentioned in the fifth page of the letter dated 24.05.2011 that regarding certified copies of his ACRs, they will have to be photocopied by the Appellant himself and collect the same in order to maintain secrecy of the same. So also it was mentioned that regarding ACRs of other five Inspectors necessary decision will be conveyed to him in reference to a cutting from 'Times Of India' after consulting appropriate authorities. That vide registered letter dated 25.05.2011 it was made known to the Appellant that the ACRs of other Inspectors cannot be given to the Appellant and the copies of his own ACR will be certified by the Respondent No. 1 as Respondent No. 1 was also holding the charge of the Controller, Legal Metrology. Regarding one cutting on the 'Times Of India' dated 23.05.2011 which was a decision given by Central Public Information Commission the same was not binding on the Respondent no. 1 as it was not decision of Goa State Information Commission nor a Supreme Court Judgment. That being aggrieved by the reply of the Respondent No. 1 the Appellant moved an Appeal to the First Appellate Authority. That the Respondent No. 1 was also holding the charge of Controller, Legal Metrology and could not act as First Appellate Authority and a reply was made to the Appellant dated 14.06.2011. That the Appellant has also mentioned the grounds as set out in the Memo of Appeal. The details are mentioned in the reply.

3. Heard the arguments. The Appellant argued in person and the Respondent also argued in person.

The Appellant referred to the application dated 25.04.2011. He referred to the facts of the case in detail. According to him the copies of ACRs were asked to enable him and also to ascertain as to why he was not promoted and his juniors have been promoted. He also submitted that CRs were not communicated and on the pretext of secrecy the same was not shown. He also filed written arguments which are on record. In short, according to him he has right to see the ACRs of others. He relied on the decision of this Commission and also of Central Information Commission. He also relied on judgment of the Hon'ble Supreme Court. The Xerox copies of all the documents are on record.

During the course of his arguments the Respondent submitted that all information has been furnished except the copies of ACRs of five Inspectors. He also submitted about the ruling of this Commission.

4. I have carefully gone through the records of the case and also considered the arguments advanced, written arguments on record and also the rulings on which Appellant placed reliance. 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 25.04.2011 the Appellant sought certain information. The information consisted of 17 items/points from Sr. No. 1 to 17. It is seen that by letter dated 29.04.2011 the P.I.O. transferred the request in respect of point No. 7, 8, 9 and 10 to Asst. Controller Metrology, North Zone under section 6(3) (ii) of R.T.I. Act. By letter dated 18.05.2011 the P.I.O. informed the Appellant that information is ready and to pay Rs.8,860/- towards the cost of 4430 pages of certified copies. It appears that by letter dated 24.05.2011 the information was furnished and that the Appellant received the same. The only information that was not furnished was the ACRs of five employees as mentioned in the application.

During the course of his arguments the Appellant submitted that ACRs of certain officers sought have not been furnished. The short point that falls for consideration is whether the same can be granted?

6. The view taken earlier was that ACRs should not be disclosed and in earlier cases the same was not shown even to the concerned employee. It was also believed that providing ACR may embarrass the official. Even Central Information Commission in earlier cases has held as under:-

"ACRs are protected from disclosure because arguably such disclosure seriously harm inter-personal relationship in a given organization. Further the ACR notings represent an interaction based on trust and confidence between the officers involved in initiating, reviewing or accepting the ACRs. These officers could be seriously embarrassed and even compromised if their notings are made public. There are thus reasonable grounds to protect all such information through a proper classification under Official Secrets Act. In view of this the decision of the C.P.I.O. is upheld and appeal is dismissed." [Shri Satish Kumar Chaudhary *v/s.* Ministry of Communications & IT Appeal No. 128/ICPB/2006 F. No. PBA/06/102 dated 17.10.2006].

In *N. Aknon v/s. Office of the Chief Commissioner of Income Tax* (Decision No. 446/IC (A) 2006 F. No. CIC/MA/A/2006/00634 dated 13.12.2006) it was held that the contents of ACR, particularly the remarks made by the superior officers are treated as confidential information, the disclosure of which is barred under section 8(1)(j) of the Act.

Again it was held in another case that the assessment reports by the superior officers are personal and confidential information and therefore exempted under section 8(1)(j) of the R.T.I. Act. Yet in another case it was held that ACRs and its grading not liable to be disclosed. The law that was crystallized by various rulings was that ACR should not be disclosed.

However this view was changed in view of decision of the Hon'ble Supreme Court in *Dev Dutt v/s. Union of India & Others* (2008) 8 SCC 725. IT is observed as under:-

"39. In the present case we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State Service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our view is the correct legal position even though there may be no rule/G.O. requiring communication of the entry or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness is State action as envisaged by Article

14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided an authority higher than the one who gave the entry otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency by public administration, and would result in fairness to public servants. The State must be model employer and must act fairly towards its employees. Only then would good governance be possible.

41. We, however, make it clear that the above directions will not apply to military officer because the position for them is different as clarified by this Court in *Union of India v/s. Major Bahadur Singh* 2006 (1) SCC 368. But they will apply to employees of statutory authorities, public sector corporation and other instrumentalities of the State (in addition to Government Servants).

The full Bench of decision of C.I.C. in Appeal No. CIC/WB/A/2007/00422 considered the disclosure of ACRs referring to Supreme Court decision. I need not quote the full paras. Suffice it to say that the decision point that the disclosure of ACRs to the concerned employee cannot, therefore, be denied in the light of decision/directives of the Hon'ble Apex Court.

In subsequent rulings C.I.C. has disclosed ACRs to the concerned officers/employees.

7. Now in the instant case the Appellant wants to see the ACRs of five employees/officers. In the light of the decision of Hon'ble Supreme Court and full Bench of C.I.C. this request cannot be granted. This view has been taken by this Commission. This can be seen by the ruling relied by the Appellant. I have perused the other rulings of Hon'ble Supreme Court

and Central Information Commission Hon'ble Shri S. Gandhi relied by the Appellant. However the Bench decision of this Commission is binding on this Commission sitting singly.

In the case before me the Appellant through his case/written arguments as well as oral has presented a case whereby he feels injustice has been done to him. The mandate of R.T.I. is transparency and openness. According to Appellant the disclosure of ACRs of the persons sought would demonstrate violation of rules by the Public Authority. No doubt that when public authority violates the established norms or rules information which would demonstrate such violation cannot be held up from disclosure. However, in view of various rulings a balance has to be struck. In my view the ACRs, i.e. remarks of the officers mentioned by Appellant in point at Sr. No. 3 of his application dated 25.04.2011 be shown to him. It is to be noted here that personal data of the official need not be shown as it would not be proper to do so without hearing third party. However, assessment done could be shown. This is being done so that Appellant should not feel that any injustice has been done to him. P.I.O. to note that no copies or photocopies be given. Only the same be shown to the Appellant.

8. In view of all the above I pass the following Order:-

### **ORDER**

Appeal is partly allowed. The P.I.O./Respondent No. 1 is hereby directed only to show to the Appellant the ACR remarks of the employees/officers as mentioned in point at Sr. No. 3 of the Application seeking information dated 25.04.2011 within 20 days from the receipt of this Order in the light of observations in para 7 hereinabove.

The same be shown on a mutually agreed date between the parties. Needless to say that no copies be furnished.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 2<sup>nd</sup> day of November, 2011.

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

