

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 285/SCIC/2010

Shri C. Radhakrishnan,
Asst. Engineer,
Sub-Division II, W.D.III(PHE),
P.W.D., Tonca,
Caranzalem-Goa

.... Appellant

V/s.

1) Dy. Director of Administration,
Public Information Officer,
Public Works Department, Altinho,
Panaji - Goa

... Respondent No. 1.

2) First Appellate Authority
Public Works Department,
Altinho, Panaji - Goa

.... Respondent No. 2.

3) Shri Uday A. Chari,
H. No. C-S/55, Mala,
Panaji - Goa

... Respondent No. 3.

Appellant in person
Respondent No. 1 in person.
Respondent No. 3 in person.

J U D G M E N T **(27.10.2011)**

1. The Appellant, Shri Radhakrishnan, has filed the present Appeal praying that the State Public Information Officer be restrained from issuing the information at Sr. No. 3 of the application dated 28.10.2010 of Shri Uday Chari stating that said information pertains to the third party i.e. Appellant herein and for ex parte ad interim relief in terms of prayer (a).

2. The brief facts leading to the present Appeal are as under:-
That Shri Uday Chari/Respondent No. 3 sought the following personal information of the Appellant by his application dated 20.08.2010:- (1) information pertaining to the Complaint made by Shri Gajendra Ramkrishna Usgaonkar; (2) Total number of Staff working under Assistant Engineer, Shri C. Radhakrishnan; (3) Copy of Annual Property Returns filed by Shri C. Radhakrishnan for the last five years. That the Appellant got the knowledge of the above said fact and filed his objections dated

29.09.2010 stating that information at Sr. No. 3 are personal information of the Appellant and since protected under Section 11 of R.T.I. Act, the same cannot be granted to Shri Uday Chari. That however First Appellate Authority vide Order dated 16.12.2010 without hearing the Appellant passed the Order to furnish the information. That the Appellant preferred this Appeal against the said Order dated 16.12.2010 of the First Appellate Authority. Being aggrieved by the same, the present Appeal is filed on various grounds as mentioned in the Memo of Appeal.

3. The Respondents resist the Appeal and the reply of Respondent No. 1 is on record. It is the case of Respondent no. 1 that Respondent No. 3 vide his application dated 20.08.2010 addressed to the P.I.O./Executive Engineer, Division III, St. Inez, Panaji has requested to furnish various information. That the said application was transferred by the P.I.O. vide application dated 27.09.2010 to the Office of Respondent No. 1 requesting to send the reply directly to Respondent No. 3 as regards point No. 3 in connection with Annual Property Returns filed by the Appellant for last five years. That the office of Respondent No. 1 received the application only on 28.09.2010. That the Appellant was requested vide letter dated 28.09.2010 to give his consent to disclose the information sought by the Respondent No. 3 so as to enable the Respondent No.1 to furnish the information to the Respondent no. 3. That the Appellant vide letter dated 29.09.2010 had objected not to furnish any of his information to the Respondent No. 3. That due to the objection lodged by the Appellant which was treated by him as confidential in nature and no public interest was involved, the information as regards to point 3 of the application dated 20.08.2010 to Respondent No. 2 could not be furnished to the Respondent No. 3 and accordingly Respondent No. 3 was informed vide letter dated 06.10.2010.

It is the case of Respondent No. 1 that a notice was received on 19.10.2010 from First Appellate Authority and after hearing both the parties the First Appellate Authority passed an Order on 16.12.2010 to furnish the information to the Respondent No. 3 within ten days from the date of receipt of the said Order. That acting upon the Order of Respondent No. 2, Respondent No. 1 furnished the information to

Respondent No. 3 vide letter dated 23.12.2010. It was collected by Respondent No. 3 on 24.12.2010.

4. Heard the Appellant, Respondent No. 1 as well as Respondent No. 3. The Appellant also filed written arguments which are on record.

5. I have carefully gone through the records of the case and also considered the arguments advanced as well as written arguments on record. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It appears that the Applicant/Respondent No.3 herein sought certain information from P.I.O., Executive Engineer, W.D.III, P.W.D., St. Inez, Panaji-Goa vide application dated 20.08.2010. The said P.I.O., vide letter dated 27.09.2010 sent the application to the Dy. Director of Administration, P.W.D., Panaji with a request to send the reply in respect of item No. 3 directly to the Applicant/Respondent No. 3 herein. By letter dated 28.09.2010 the P.I.O./Respondent No. 1 informed the Appellant about the application and requested the Appellant to make his submission in writing. By letter dated 29.09.2010 the Appellant herein objected to furnish the information to the Application/Respondent No.3. By letter dated 06.10.2010 the P.I.O. informed the Applicant/Respondent No. 3 that information cannot be furnished to him since the appellant herein vide his letter dated 29.09.2010 has lodged his objection.

Being aggrieved the Applicant/Respondent No. 3 preferred the Appeal. By order dated 16.12.2010 the F.A.A. ordered to furnish the information to the Applicant/Respondent No.3.

Being aggrieved by the order of the F.A.A. the Appellant herein has filed the present Appeal.

6. At the outset I must say that as per the showing of the Appellant the information is furnished and the applicant/respondent no. 3 has received the same.

It is to be noted here that the Applicant ought to have joined the third party i.e. Appellant herein before the F.A.A. F.A.A. in its turn ought to have given an opportunity to the third party before passing any order.

Section 11 of the R.T.I. Act relates to third party information. Third party has been defined under Section 2(h) to mean a person other than the citizen making a request for information required to be disclosed as confidential that the authority is required to give a written notice to such third party of the request. The legislative intent in such a provision under Section 11 appears to be for the purpose of preventing the Act from becoming a tool in the hands of a busybody only for the purpose of settling personal scores or other oblique motives.

I have perused the following rulings on the point:-

- (i) High Court of Gujarat *v/s.* State Chief Information Commissioner [2008]1 ID 409 (Guj. H.C.).
- (ii) Reliance Industries Ltd. *V/s.* Gujarat State Information Commission & Others AIR 2007 Guj 203; and
- (iii) Gokulbhai Naubhai Patel *v/s.* Chief Information Commissioner & Others AIR 2008 Guj.2.

I would not like to refer these rulings in greater detail as information is already furnished. However I would briefly refer to the same so that in future First Appellate Authorities should not repeat the same.

What satisfaction must be arrived at prior to disclosure of information about third party. Looking to the provisions of the Act essentially Section 8(d), 8(j) and proviso to Section 11(1) and looking to the process of disclosing information to the applicant relating to or supplied by the third party and treated as confidential by the third party the Act imposes a duty upon Public Information Officer to arrive at a conclusion that public interest in disclosure outweighs harm or injury to the protected interest of such third party or larger public interest warrants, disclosure of such information. In consideration whether the public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party, the P.I.O. will have to consider:- (i) the objections raised by the third party by claiming confidentiality in respect of the information sought for; (ii) whether the information is being sought by the Applicant in larger public interest or to wreak vendetta against the third party; (iii) the Public Information Officer while dealing with the information relating to or supplied by the third party, has to constantly bear in mind that the Act does not become a tool in the hands of a busybody to settle a personal score; (iv) whenever an applicant is applying

for getting any information about third party such information shall be given by Public Information Officer under Section 7 of the Act, 2005 and also keeping in mind Section 7(7) of the Act, 2005.

The F.A.A. ought to have given an opportunity to the third party. No notice was given to the third party/Appellant herein. Apart from all this the bare minimum requirement is to follow principles of natural justice which requires that concerned party should be heard.

7. I have perused the written arguments filed by the Appellant as well as the ruling relied by the Appellant. There is absolutely no dispute that third party should be heard as provided in the R.T.I. Act. The First Appellate Authority in future to see that in cases where information refers to the third party, which information the third party considers as confidential, in that case third party should be given an opportunity to be heard and then decide as per law.

8. Coming to the present Appeal the Appellant prays that S.P.I.O. be restrained from issuing the information at Sr. No. 3 of the application dated 28.10.2010 of Shri Uday Chari, stating that the said information pertains to third party, i.e. the Appellant herein.

This prayer has become infructuous as Appellant himself states that information has been furnished in pursuance of the Order of the F.A.A.

However it should be noted that Section 7(7) and Section 11(1) of the R.T.I. Act enjoin that third party, if involved in a particular matter, must be heard before a decision on disclosure or non-disclosure of any information is taken. Law requires application of mind regarding pros and cons of the proposed disclosure on the basis of the facts of each case. Hope the concerned Authorities take note of the same.

It is to be noted here that the present Order of F.A.A. should not be treated as a blanket order but only in the factual backdrop of that case only.

9. In view of the fact that information is already furnished no intervention of this Commission is required. However, with the above

observation the Appeal is to be disposed off. Hence, I pass the following Order:-

ORDER

No intervention of this Commission is required. With the above mentioned observations the Appeal is disposed off.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 29th day of October, 2011.

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