

GOA STATE INFORMATION COMMISSION

AT PANAJI

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

Appeal 31-SIC-2010

Mr. Joao C. Pereira,
H.No.40, Acsona,
Utorda, Majorda
Salcete-Goa.

...Complainant

V/s

1) The Public Information Officer,
Suptd. of Police (Crime),
Dona Paula, Panaji-Goa.

... Opponent No. 1

2) The First Appellate Authority.
Inspection General of Police,
Police Headquarters,
Panaji-Goa.

.... Opponent no.2

Appellant present
Respondent No. 1 & 2 absent
Adv. Smt. H. Naik for Respondent No.1

JUDGEMENT

(09-12-2011)

1. The Appellant, Shri Joao C. Pereira, has filed the present appeal praying that the order dated 15/01/2010 bearing no.66/2009 be quashed, cancelled and set aside, that reply of the Respondent No.1 dated 16-12-2009 be quashed, cancelled and set aside; that the respondent No.1 be directed to furnish the information as sought by the appellant on the application dated 28-11-2009 and that disciplinary action and other action under section 20 be initiated against Respondent No. 1 and 2.

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

That the appellant, vide an application dated 28-11-2009 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 No.1 by reply dated 16-12-2009 the request was rejected under section 8(1) (h) and 8(1) (g) of the R.T.I. Act. Being not satisfied the appellant preferred an appeal before the First Appellate Authority /Respondent no.2. By order dated 15/01/2010 the F.A.A. upheld the rejection by Respondent No.1 Being aggrieved by the said order 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 No.1 is on record. In short it is the case of the Respondent No.1 that Appellant addressed a letter dated 28-11-2009 to the Respondent No. 1

under R.T.I. Act seeking information pertaining to the investigation of Cr.no.327/07 and 328/07. That the application is vague and not specific that the Respondent No.1 furnished the detail reply to the Appellant. The Respondent No.1 denies that the Appellant is aggrieved. That the Respondent No.2 passed the order after hearing both the parties. The Respondent No.1 denies that the present appeal is filed within the prescribed period. The Respondent No.1 denies the grounds as set out in the memo of appeal. The affidavit to that effect is on record. In short according to the Respondent No. 1 the appeal is liable to be dismissed.

4. Heard the arguments. The Appellant argued in person and the learned Adv. H. Naik, argued on behalf of Respondent No.1

The Appellant referred to the facts of the case in detail. According to him he sought certain information vide application dated 28-11-2009. That reply was filed thereby rejecting the application. He also referred to the First Appeal and order passed. He next submitted that he is complainant and accused are police officers. According to him prayer be granted and disciplinary proceedings be initiated for malafide denial.

During the course of her arguments Adv. for Respondent No.1 submitted that reply was furnished in time. However information could not be furnished as investigation was pending. According to Adv. for Respondent the investigation is now over.

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 the Appellant vide letter dated 28-11-2009 sought certain information i.e complete details of the investigation carried out on Cr. no. 327/07 and 328/07 by you through different investigation officers from 03-10-2008 till date. It appears that the said letter was received by P.I.O. on 04-12-2009. By reply dated 16-12-2009 the Respondent No.1 informed the Appellant that request cannot be considered as report under section 173 of Cr. P.C of Cr. no.327/07 is already submitted to the Hon'ble of J.M.F.C. Court Vasco and that matter is presently sub-judice and that information would impede the process of prosecution of offenders. The request was rejected. Being aggrieved the appellant preferred the First appeal before the First appellate authority/Respondent No.2. By order dated 15-01-2010 the F.A.A. observed as under;-

“ The said information was refused by the P.I.O., SP Crime under section 8(1) (h) and 8 (1)(g) of R.T.I. Act 2005.

The copy of the reply filed by P.I.O. S.P. Crime is given to the Appellant. As case papers of Cr.no 328/07 are being prepared, the appellant has to wait till the investigation report is submitted to JMFC.

If the appellant

Being aggrieved by the said order the appellant has preferred the present appeal.

6. The Appellant by the present appeal wants to know complete details of the investigation carried out on Cr.No.327/07 and 328/07 whether such a request can be granted..

It is pertinent to note section 8(1) (g) and 8(1) (h) which are as under:-

“8 Exemption from disclosure of Information (1) Notwith standing anything contained in this Act, there shall be no obligation to given any citizen.

- a).....
- b).....
- c)
- d)
- e)
- f)
- g) Information the Disclosure of which would endanger the life or physical safety of any person or identity the source of information or assistance given in confidence for law enforcement or security purpose.
- h) Information which would impede the process of investigation or apprehension of offenders.”
 - i)
 - j).....

In the case at hand the question of “ identify the source of information” would not come in play as Appellant is the Complainant /Informant of Cr.no.328/07 and one of the witness of Cr.no.327/07 registered on the complaint of Smt. Fakirawa Odra against the police officers who are accused in the said Cr.no. 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 investigation process cannot be a ground for refusal of investigation.

However it is to be shown satisfactorily as to why the release of such information would hamper the investigation process.

7. I have perused some of the rulings of Central Information Commission on the point. In sub-judice matters if the Tribunal/court expressly prohibits disclosure of information then only can be refused.

(i) Mukesh Bhasney V/s CST Mumbai (No.CIC/UK/A/2006/00274) dated 15-12-2006). This case was about action taken on corruption complaint and 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.

(ii) In a case Ms. Pushpa V/s. Police, Delhi (Application No. CIC/AT/A/2006/00395 dated 19/01/2009 where information sought regarding enquiry in respect of complaint of the Appellant to the police, the Commission held that it may be disclosed after concealing from it names, etc of person whose depositions are recorded.

In the light of above ruling and considering that Appellant is also a complainant the information sought can be furnished . It was also submitted that investigation is over. If it is so then information could well be furnished.

8. It was contended that information is not specific. In case P.I.O. finds that the same is not specific then P.I.O. can seek clarification from the appellant and appellant can furnish such clarification .

It is to be noted that the above observation are not regarding case diaries as normally case diaries are not disclosed.

In view of all the above, I am of the opinion that the request of the appellant is to be granted.

9. Regarding delay. Considering the application and reply it is seen that the same is in time. Even first Appeal is disposed in time .

Regarding disciplinary action the invocation of section 8(1) (h) and (g) are within law and the same cannot be termed as malafide. Law provides for the same.

10. In view of the above, I pass the following order;

ORDER

The appeal is allowed. The order of F.A.A. is set aside. The Respondent No.1 is directed to furnish the information to the Appellant

as sought by him vide his application dated 28-11-2009 within 30 days from the receipt of this order.

In case Respondent No. 1 wants any clarification he can seek the same from the appellant and Appellant to furnish the same. The whole process to be completed within 30 days.

The appeal is accordingly disposed off.
Pronounced in the Commission on this 9th day of December, 2011.

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