

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.160/SIC/2010

Shri Joao C. Pereira,
R/o.Utorda, Majorda,
Salcete, Goa

... Appellant.

V/s.

1. The Public Information Officer,
Suptd. of Police (South),
Margao – Goa
2. First Appellate Authority,
Inspector General of Prisons,
Police Headquarters,
Panaji – Goa

... Respondents

Appellant in person.

Respondent No. 1 and 2 absent.

Id. Adv. Smt. N. Narvekar on behalf of respondent No.1.

J U D G M E N T
(09/12/2011)

1. The Appellant, Shri Joao C. Pereira, has filed the present Appeal praying that respondent No.2's order bearing No.33/2010 be quashed, cancelled and set aside; that respondent No.1's letter dated 31/3/2010 addressed to the appellant be quashed, cancelled and set aside; that respondent No.1 be directed to furnish the correct information to the appellant as sought in the application dated 22/3/2010 and that action be initiated as per section 18 and 20 of the Act against respondent No.1 and 2 for deliberately and willfully denying the information contrary to the provision of the Acts to protect their colleagues involved in inquiries and preparation of reports under complaints of the appellants and others.

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

That the appellant, vide application dated 22/3/2010, 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 addressed the letter to the appellant dated 31/3/2010 denying the information by stating that the information called does not come under the purview of the sec.12 of the R.T.I. Act. Being aggrieved by the reply of the respondent No.1, the appellant has preferred the appeal before First Appellate Authority(F.A.A.)/respondent No.2 U/s.19(1) of the Act on 22/04/2010. That the same was not heard by the respondent within the stipulated period of 30 days as per the Act nor heard anything about it from the respondent No.2's office by the appellant. That suddenly on 6/6/2010 a constable of Verna Police Station came to the residence of the appellant with an order bearing No.33/2010 under the signature of respondent No.2; that since there was no date of passing the order, the appellant refused to accept the same and wrote another letter to respondent No.2 dated 06/06/2010 and delivered to respondent No.2's office through Verna Police Station. That thereafter the respondent No.2 passed one more joint order bearing No.33/2010 , 34/2010 and 35/2010 dated 9/6/2010 stating in the said order that the first order bearing No.33/2010 was passed on 3/6/2010 i.e. after expiry of stipulated period of 30 days and was passed after 43 days from the date of filing of the appeal without assigning any reason for the delay as stipulated in section 19(6) of the Act. But merely giving a lame excuse that order was decided on 3/6/2010 due to exigencies of duties. Being aggrieved by the said order the appellant has preferred the present appeal on various grounds which are set out in the memo of appeal.

3. The respondent resists the appeal and the reply of respondent No.1 is on record.

It is the case of respondent No.1 that the appellant vide his application dated 22/3/2010 had sought certain information. That as per Sec.7 of the R.T.I. Act, the said application was disposed and the appellant was informed by letter dated 31/03/2010 stating

that the information called for does not come under purview of sec.2(f) of R.T.I. Act. That the appellant was duly informed about the same. It is the case of respondent No.1 that the mechanism by which any fact submitted in a report by a subordinate officer are verified and/or vetted by his superior is not subject to any laid down procedure and hence any specific answer cannot be identified as responsible for such verification before such superior submit his report to higher authority.

4. Heard the arguments. The appellant argued in person and Ld. Adv. Smt. N. Narvekar argued on behalf of Respondent No. 1.

The Appellant referred to the facts of the case in detail. According to him application was filed on 22/3/2010 seeking some information. He referred to the reply filed by the respondent No.1. He next submitted that his appeal was not heard within 30 days by respondent No.2. He also submitted that Sec.19(6) is not complied and that Commission has to take action against respondent No.2. The appellant next referred to the reply of respondent No.1. Referring to Sec.4 of the R.T.I. Act respondent No.1 submitted that he is entitled for information.

During the course of her arguments ld. Advocate for the respondent submitted that reply was furnished in time. She also submitted about sec.2(f) according to her frame of the question seeking information is not proper. Advocate for respondent No.1 argued on similar lines as mentioned in the reply.

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 by application dated 22/03/2010, the appellant sought certain information from the P.I.O./respondent No.1. By reply dated 31/3/2010 the respondent No.1 informed the appellant that the information called does not come under the purview of Sec.2 (f) of the R.T.I. Act. Being aggrieved the appellant

filed the appeal before the First Appellate Authority/respondent No.2 on 5/4/2010. It appears that order was passed by F.A.A. and communicated/sent to the appellant. By letter dated 6/6/2010 appellant informed respondent No.2 that he has refused to accept the same as date was not mentioned. Subsequently it was informed that the order was passed on 3/6/2010 due to exigencies of duty.

It is to be noted here that appeal is to be decided within one month from the date of receipt of the appeal. No doubt the said period could be extended by another 15 days but reasons are to be given. In the instant case, appeal is dated 5/4/2010. There is nothing on record to show as to when the same was received. In the order of respondent No.2 it is mentioned as received on 22/4/2010. It appears that no hearing was given. Even though Act does not speak of hearing yet in the interest of natural justice parties are to be heard or given opportunity of being heard. Hope F.A.A. would bear the same in mind in future.

F.A.A./respondent No.2 dismissed the appeal as being devoid of merits.

According to the appellant the order is bad, he is entitled for the information and that it is the obligation of the public authority to furnish in terms of Sec.4(1)(b).

6. I have seen the application dated 22/03/2010. The same uses the word “supposed to verify and check”. This has a tone of being hypothetical. Right to access of information has been defined under Sec.2(j) of the said Act and an analysis of the same would make it clear that the right relates to information that is held or under the control of any public authority. Under Sec.2(f) if the information is non-est the Public Authority cannot provide the same.

Viewed in this contest the information sought has to be modified as “kindly give me the names and designations of the police officers at S.P. (South) office who verified and checked the contents of various enquiry reports prepared by the S.D.P.O. Vasco on the complaint of Joao C. Pereira, Natividade Fernandes and

others, Fakirawa Odra, which were referred for inquiry before S.D.P.O. Vasco from the year 2005 till date before submitting any inquiry report by SP (South) based on S.D.P.O. Vasco enquiry report addressed to the office of DIG, DGP and other offices.

To my mind there should be no objection to furnish such information. It is to be noted here that P.I.O. is supposed to furnish available information and not to create the same because some information seeker has asked for it.

7. In view of the above, I am of the opinion that the P.I.O. can very well furnish the information as under.

“Kindly give me the names and designations of the police officers at S. P.(South) Office who verified and checked the contents of various enquiry reports prepared by S.D.P.O. Vasco on the complaint of Joao C. Pereira, Natividade Fernandes and others, Fakirawa Odra, which were referred for inquiry before S.D.P.O. Vasco from the year, 2005 till date before submitting any inquiry report by S.P.(South), based on S.D.P.O. Vasco enquiry report addressed to the office of DIG, DGB and other officers.”

Hence I pass the following order :-

ORDER

The appeal is allowed. The order of the F.A.A. is set aside. The respondent No.1/P.I.O. is hereby directed to furnish the information as mentioned in para 7 herein above i.e.”kindly give me the names and other officers.” within 30 days from the receipt of the order and report compliance.

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

