

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

**Appeal No.93/SCIC/2011**

Shri Francis Dias,  
R/o.Betani House, H. No.196/1(10),  
Leo Park Colony,  
Behind M.E.S. College, Sancoale, Goa ... Appellant.

V/s.

1. The Public Information Officer,  
V. M. Salgaoncar College of Law,  
Miramar, Panaji-Goa
  2. The First Appellate Authority/Principal,  
V. M. Salgaoncar College of Law,  
Miramar, Panaji-Goa
- ... Respondents

Appellant absent. His representative Shri Glen Cabral present  
Respondent No.1 and 2 absent.  
Adv. A. Bhobe for respondent No.1 present

**J U D G M E N T**  
**(19/01/2012 )**

1. The Appellant, Shri Francis Dias, has filed the present appeal praying that the Public Information Officer, V. M. Salgaonker College of Law, be directed to furnish the information asked free of cost.

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

That the appellant, vide application dated 17/2/2011, 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 the P.I.O./Respondent No.1 vide letter dated 8/3/2011 informed that Shri Pankaj

Bandekar has objected to supply the information sought as it comes under personal information. Being not satisfied the appellant preferred an appeal before the First Appellate Authority(F.A.A.)/respondent No.2. That the F.A.A. dismissed the appeal vide order dated 20/4/2011. Being aggrieved by the said order, the appellant has preferred the present appeal.

3. The respondents No.1 resists the appeal and the reply is on record. It is the case of the respondent No.1 that the appeal is not maintainable and the same is misconceived in law and on facts. On merits it is the case of the respondent No.1 that the application dated 17/2/2011 filed by the appellant is not disposed off on account of the invocation of Section 11 of the R.T.I. Act and more particularly on account of the failure of the appellant to file his response to the objection received from the third party i.e. Pankaj P. Bandekar. The said facts are evident from the order dated 20/4/2011 passed by the respondent No.2. That, at any rate, it is neither the case nor the contention of the appellant that his application dated 17/2/2011 was disposed. In view of this the present appeal filed by the appellant is not maintainable at this stage and as such liable to be dismissed on this count alone. That in view of the order dated 20/4/2011 passed by the respondent No.2 the appellant was to file his reply to the objections raised by the third party and upon the said objections being filed by the appellant the respondent No.1 would dispose off the application dated 17/2/2011 filed by the appellant. The appellant instead of filing his objection in terms of the order dated 20/4/2011 has directly approached the Commission by filing the second appeal. That such a course is not available to the appellant more so on account of the undisputed fact that the appellant has not exhausted all his remedies available under the law. That from the prayer it is clear that only relief sought is for a direction to this respondent No.1 to furnish

information. That the application dated 17/2/2011 is not disposed on account of the failure of the appellants to file his objections regarding third party. That the said application would be disposed immediately upon receipt of the reply of the appellant. That the disposal of the application dated 17/2/2011 is awaiting the response of the appellant. That the respondent No.1 could not have proceeded with the disposal of the application dated 17/2/2011 on account of order dated 20/4/2011 passed by the respondent No.2 which order had attained finality. It is the case of the respondent No.1 that since the information related to third party notice was issued to the party and the third party had filed objections which were forwarded to the appellant by Registered Post A/D however the same was returned unserved with the postal endorsement "Unclaimed Returned to Sender" That the said envelop was opened before Respondent No.2 and objections were handed over to the appellant. That the order dated 20/4/2011 indicates that the appellant was required to give his reply which the appellant had failed and neglected to do thereby resulting in non-disposal of the application dated 17/2/2011. According to respondent No.1 appeal is liable to be dismissed.

It is the case of the respondent No.2 that the appeal is not maintainable. That the respondent No.2 is neither a proper nor necessary party to the present appeal more so on account of the contents and the prayer made by the appellant in the above said appeal. That no relief are sought against the respondent No.2 in the present appeal. According to the respondent No.2 appeal be dismissed.

4. Reply of the appellant dated 14/11/2011 is also on record.

5. Heard the arguments. Shri Glen Cabral representative of the appellant argued on behalf of appellant and the Learned Adv. Smt. A. Bhohe argued on behalf of the respondent No.1.

6. 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 17/2/2011, the appellant sought certain information. The information was regarding one Pankaj Bandekar. By letter dated 8/3/2011 the P.I.O. informed the appellant Pankaj Bandekar has objected to supplying the information sought by him as it comes under personal information. Copy of the reply of Pankaj Bandekar was sent. It was also informed that submissions if any, may be submitted within a week's time. It is seen that appellant did not file any reply as such, instead filed an appeal before First Appellate Authority. By order dated 20/4/2011 the First Appellate Authority observed as under :-

“The P.I.O. contends that he has not rejected or refused the appellant information. The appellant was asked to give his reply to the objections raised by the third party and the P.I.O. could then proceed further in the matter. The appellant was informed accordingly and since the P.I.O. has agreed to respond on receipt of the reply from the appellant, the appeal stands dismissed as the appellant could always approach this authority after the matter is disposed off by the P.I.O. in the usual course.”

7. The main contention of the respondent No.1 is that the application has not been yet decided since the appellant has not yet furnished the reply as directed by F.A.A.

I am not going in to the merits of the case and I intend to send back the matter to the P.I.O./respondent No.1 to decide the same. However I would like to refer to certain provisions.

Sec.7 refers to disposal of the request and is as under :-

“7. Disposal of request.

(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section(3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in section 8 and 9:

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section(1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

In short under R.T.I. it is a time bound programme and request is to be disposed within 30 days. In case it is not disposed off within 30 days it is treated as refused in terms of Sec.7(2) above. The endeavour should be to dispose within the stipulated time.

Admittedly the information is regarding third party. Therefore Sec.11 of the R.T.I. Act would come into play.

Sec.11 is as under :-

**“11. Third Party Information –**

(1)Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record

or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in Section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

This section gives a valuable right to third party that encapsulates the principle of natural justice and the R.T.I. Act mandates that there cannot be a disclosure of information pertaining to or which relates to third party without giving such third party an opportunity of being heard on whether such disclosure should be ordered. Once third party gives objection it is for the P.I.O. to decide the same in terms of R.T.I. Act only.

7. I have perused the reply of the respondent No.1 and also considered the reply of the appellant dated 14/11/2011 which is on record.

Looking at the entire material on record, I find that there is some procedure lapse. In any case to my mind the matter is to be sent back to the P.I.O. to decide the same in accordance with law. Objection of third party i.e. copy of the same is furnished to the appellant/applicant. In case he wants to file any reply he can do so. In case he does not want to file it is for the P.I.O. to consider and decide in accordance with law. Needless to add that if appellant is aggrieved he can file First Appeal and also second appeal as per law.

9. In view of all the above, I pass the following order :-

### **ORDER**

The matter is sent back to the P.I.O. to consider the request of the appellant/applicant, hear the parties if required and pass the order accordingly. In case the appellant/applicant wants to file any reply to the objections he can do so within 5 days from the receipt of this order. If no reply is filed the P.I.O. to hear and decide the matter within 15 days from the date of receipt of this order.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 19<sup>th</sup> day of January, 2012.

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