

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 82/SCIC/2011

Mr. V. A. Kamat,
Next to Hotel Ameya,
Opposite to St. Inez Church,
St. Inez,
Panaji - Goa

.... Appellant

V/s.

1) Public Information Officer,
The Superintendent of Police (HQ),
O/o. the Director of General of Police (PHQ),
Panaji - Goa ... Respondent No. 1.

2) First Appellate Authority,
The Inspector of General of Police (Goa),
Police Headquarters,
Panaji - Goa Respondent No. 2.

Appellant in person.

Adv. V. Sardesai for Respondent No. 1.

J U D G M E N T **(27.01.2012)**

1. The Appellant, Shri V. A. Kamat, has filed the present Appeal praying that the present Appeal be allowed; that transfer of application under Section 6(3) of the RTI Act within the said Public Authority be held as breach of the provisions of the RTI Act; that the Impugned Order passed by the Respondent No. 2 be quashed and set aside; that Respondent No. 1 be directed to furnish the information sought without further delay; that Respondent No. 1 be directed to furnish the said information free of charge in terms of Section 7(6) of the RTI Act; that penalty under Section 20(1) of the RTI Act be imposed on Respondent No. 1 as he is deliberately and with malafide intention refused to furnish legitimate information.

2. The brief facts leading to the present Appeal are as under:-
That the Appellant filed an application dated 19.01.2011 seeking 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 transferred the said application under Section 6(3) of the R.T.I. Act to the Superintendent of Police, Crime vide letter dated 21.01.2011 which was again transferred back to the Respondent by the Superintendent of Police (Crime) by his letter dated 02.02.2011. That on 18.02.2011 Appellant received a letter from Respondent No 1 dated 17.02.2011 rejecting the request of the Appellant on the ground that the information sought falls under Section 8(1)(h) of the RTI Act. That the Respondent in utter disregard to the mandate of law, did not explain how and in what way the said information, if provided, would impede the process of investigation or apprehension and prosecution of offenders. That the said report/information sought was submitted only after the inquiry conducted by the Crime Branch was complete. That aggrieved by refusal of information by Respondent No. 1 the Appellant filed First Appeal before Respondent No. 2/First Appellate Authority (F.A.A.). That after hearing the Appellant the FAA/Respondent No. 2 passed an order upholding the refusal on three additional grounds namely, (i) that the Appellant is in no way connected to the matter; (ii) that the Appellant does not have a locus standi in this sensitive case; (iii) that the case is proposed to be transferred to CBI. 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 is on record. In short, it is the case of the Respondent that present Appeal is baseless, misconceived and devoid of merits and, therefore, ought to be dismissed. That the Appeal is filed with a malafide intention to harass the Respondent since the information which was sought under R.T. I. Act was not furnished to him. That the Appellant is a senior citizen who had sought information from the P.I.O., SP (HQ) regarding inquiry conducted against Police Sub Inspector, Sunil Gudlar having involved in drug peddling case vide application dated 19.01.2011. That the Appellant is in no way connected to the matter. That the information which has been sought by the

Appellant is not in public interest or no way related to public at large. That as per the provisions of R.T.I. Act the information which has been sought should be beneficial to public at large. That the Appellant is seeking this information for his own benefit and not in interest of public. It is further the case of Respondent that investigation of drug peddling case is in progress and as far as enquiry report is concerned this Department has not received any report from P.I.O., SP, Crime Branch. That if the information is furnished to the Appellant at this stage then it would impede the process of investigation and would also lead to tempering with the documents and evidence. That the said case is already transferred to CBI by the Government and the Appellant has no locus standi in this sensitive case. That since the case is transferred to CBI, whatever information Appellant wants to seek pertaining and precisely to this case may be sought directly from the CBI. According to the Respondent this Appeal is liable to be dismissed.

4. Heard the arguments. Appellant argued in person and the Learned Adv. Shri V. Sardesai argued on behalf of the Respondent No. 1. Appellant also filed synopsis of the arguments which is on record.

The Appellant referred to the facts of the case in detail. According to him information sought was rejected under Section 8(1)(h) and that Respondent No. 2 upheld the decision of P.I.O. According to him inquiry is complete and report has been submitted and, therefore, the report is public document and he is liable for the same. He also referred to the aspect of public interest, etc. He next submitted that how and why furnishing of the information would impede process of investigation has not been explained and the denial is malafide. He referred to various rulings of CIC the copies of which are on record. He also submitted that apart from other things this information cannot be denied to the State Legislature and, therefore, he is also entitled for the same. According to him Appeal is to be allowed.

During the course of his arguments Learned Advocate for Respondent submitted that all the documents would be produced at the proper stage. According to him investigation is pending and as soon as investigation is over request can be considered. Advocate for Respondent elaborated his contention as to how it is detrimental to furnish the same. According to him Appeal is liable to be dismissed.

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 19.01.2011 the Appellant sought certain information, that is, certified copy of the report. By letter dated 21.01.2011 the P.I.O., Office of the Director General of Police, P.H.Q., transferred the said request under Section 6(3) of the RTI Act to the S.P. Crime (W.C's), P.I.O., Dona Paula, Goa and copy was endorsed to the Appellant. By letter dated 02.02.2011 the P.I.O., S.P. Crime Dona Paula returned the application to P.I.O. S.P. (H.Q) (W.C's) and copy of the same was endorsed to the Appellant. The P.I.O. also informed to furnish the information directly to the Applicant. By letter dated 17.02.2011 P.I.O. S.P. H.Q. informed the Appellant that the information sought by him is rejected under Section 8(1)(h) of the RTI Act, 2005.

Being not satisfied the Appellant preferred an appeal before the First Appellate Authority/Respondent No. 2. By Order dated 25.03.2011 the FAA rejected the request and upheld the reply of the P.I.O.

It is seen that request is rejected under Section 8(1) (h).

6. First, I shall refer to Section 8(1) (h) of the RTI Act which is as under:-

“8. Exemption from disclosure of information – (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen –

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h) information which would impede the process of investigation or apprehension or prosecution of offenders

(i)

(j)

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 an investigation process cannot be a ground for refusal of information. It is to be noted that as per records the inquiry was completed and report was submitted to the concerned Authority. The short point that arises for consideration is whether the request of the Appellant is to be granted or not.

There is no dispute that report is furnished to the Director General of Police. It is but natural that report is furnished since inquiry is over. In the instant case it is seen that no reason is assigned by the PIO or for that matter FAA as to how the investigation or apprehension of any offenders will be impeded by disclosing this report. As a matter of fact since the report is submitted, there can be no reason to deny this or all the other relevant information.

In Neeraj Kumar v/s Jawahar Lal Nehru University (Decision No. CIC/OIC/A/2008/01303/SG/1145 dated 16.01.2009 Appeal No. CIC/OIC/A/2008/01303) it was observed as under:-

“..... Inquiries into various matters are conducted with Public Money and Public has a right to know their findings. Keeping them under wraps for months and years serves no purpose except allowing wrong doers to be protected. The PIO's use of Section 8(1) (g) claiming that disclosure of the information would endanger the life or physical safety or identify the source of information appears to be a flight of fancy, in the absence of any cogent reasoning.

The Hon'ble High Court of Delhi, in the matter of Bhagat Singh v/s. Chief Information Commissioner and Ors. Dated 03.12.2007, at para 13 has held as follows:-

“Under Section 8 exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, but the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1) (h) and other such provisions would become the haven for dodging demands for information.”

Thus no reasonable ground exists for denial of information and the PIO and the First Appellate Authority have erred in their decision. While parting we must also point out that even if the PIO and the First Appellate Authority had made the error of taking refuge in these two sections, they should have applied Section 8(2) of the Act and realized that there is an overriding public interest in disclosing this information since it relates to alleged defalcation of funds. If the inquiry report reveals defalcation there is public interest in knowing about it, if it

reveals that no defalcation has occurred it will exonerate the alleged perpetrators.

The Commission finds the denial of information to be without the basis of law.”

Though the report in the above case was regarding defalcation of funds yet the principle is applicable to the case before me. Interpretation of Section 8 should not be such so as to shadow the very right itself thereby imposing restriction on the RTI Act.

7. I have also perused the rulings relied by the Appellant and I have also perused some other rulings of C.I.C. In the ruling relied by the Appellant request was granted.

8. According to the Respondent, Appellant is in no way connected to the matter and that information sought is not in public interest.

Section 3 of the RTI Act lays down that all citizens have right to information. Under Section 6(2) the applicant making request need not give reasons for requesting information. It is pertinent to note that under the scheme of RTI Act the citizens and information seekers have an overriding right to be given information on matters in possession of the State and public agencies that are covered by the Act. The 'mantra' under RTI is transparency, accountability and openness.

9. It is also submitted that case is transferred to CBI. It shows that inquiry is complete. So there should be no hurdle in providing the Report.

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

ORDER

The Appeal is allowed. The Respondent No. 1 is hereby directed to furnish to the Appellant the information sought by him vide his application dated 19.01.2011 within 20 days from the date of receipt of this Order.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 27th day of January, 2012.

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

