

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.151/SCIC/2011

Shri Bharat Kandolkar
R/o.Wadi, Candolim,
Bardez - Goa

... Appellant.

V/s.

1. The P.I.O., Secretary,
Village Panchayat of Candolim
Bardez-Goa
2. The First Appellate Authority,
Block Development Officer-I,
Bardez, Mapusa, Goa

... Respondents

Appellant present. His Adv.Shri Kashalkar present.
Respondent No.1 and 2 absent.
Adv. M. D'Souza for respondent present.

J U D G M E N T
(04/04/2012)

1. The Appellant, Shri Bharat Kandolkar, has filed the present appeal praying that order dated 06/04/2011 be quashed and set aside. The application of the appellant dated 9/12/2010 be allowed and the respondent No.1 be directed to furnish copies of the document stated in the application and that necessary disciplinary departmental action be initiated against respondent No.1 for not furnishing the information sought by the appellant under the R.T.I. Act and also fine be imposed.

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

That the appellant, vide his application dated 09/12/2010 sought certain information under the 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 did not furnish the information to the appellant. That being aggrieved with the action of respondent No.1, the appellant preferred appeal before First Appellate Authority(FAA)/respondent No.2. That by order dated 6/4/2011 the respondent No.2 dismissed the first appeal. Being aggrieved by the impugned order, the appellant has preferred the present appeal on various grounds as set out in the memo of appeal.

3. In pursuance of the notice issued, the respondent No.1 appeared. Ld. Advocate Shri A. F. D'Souza appeared for respondent No.1. Respondent No.1 did not file any reply as such. However advocate for the respondent No.1 advanced arguments.

4. Heard the arguments. Ld. Adv. Shri S. Kashalkar argued on behalf of appellant and the ld. Adv. Shri A. F. D'Souza argued on behalf of respondent No.1.

Advocate for the appellant referred to the facts of the case in detail. According to him application is dated 9/12/2010 and the information sought is in respect of 13 items. He next submitted that information sought was within 48 hours. He also attacked order of F.A.A. According to him appeal be allowed and the information be furnished.

Ld. Adv. Shri A. F. D'Souza also referred to the facts of the case. According to him, provisions can not be used in breach of law. He also submitted that appellant should file a fresh application and obtain information. He referred to para 4, 5 and 6 of Memo of Appeal. He also submitted about life and liberty referred to in Sec.7 of the R.T.I. Act. According to him the information sought ought to have been given in normal course.

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 vide application dated 9/12/2010 the appellant sought certain information. The information consisted of certified copies 1 to 7 and other information from 1 to 6 in all 13 items. The appellant also mentioned that the information is required within 48 hours since it is concerned with his life and liberty. It appears that the same was not furnished and hence the appellant preferred appeal before First Appellate Authority/respondent No.2. The appeal was filed on 15/12/2010. The said appeal was dismissed since it is premature by order dated 06/04/2011.

In the first place appellant ought to have waited till the statutory period was over and then preferred appeal if information was not furnished. The respondent No.2 on his part should have disposed the appeal within 30/45 days as per R.T.I. Act. Besides the appeal ought to have been disposed on merits.

6. The appellant has stated that information concerned the life and liberty of the appellant and the same be provided within 48 hours on receipt of the request.

Now it is to be seen whether there is any delay in respect of this. Under Sub-section(1) of Sec.7 of the C.P.I.O. or S.P.I.O. has to provide the required information within a period of 30 days. Further under proviso to sub-sec(1), the information in cases concerning "Life or Liberty of a person" shall be provided within 48 hours.

Life and Liberty are two of the most important facets of our existence. Liberty means autonomy or immunity from arbitrary exercise of authority. R.T.I. Act envisages that the information pertaining to life and liberty of a person should be disclosed

urgently. This has to be applied only in exceptional cases and the question as to whether information sought concerns the life and liberty of a person has to be carefully scrutinized in a proper perspective and imminent danger has to be substantially proved.

I have perused some of the rulings of Central Information Commission on the point.

- (i) In Shekhar Sing & Smt. Aruna Roy V/s. Prime Minister's Office (Appeal No.CIC/WB/C/2006/0066 dated 19/04/2006) the C.I.C held that for the matter to be treated as one of life and liberty in case of a hunger strike. The application should be accompanied with substantive evidence such as medical report that a threat to life exists.
- (ii) R. C. Sankula, New Delhi V/s. Director General of Vigilance Customs and Central Excise, New Delhi (Appeal No.3/1C(A)CIC/2006 dated 24/02/2009). In this case prosecution was filed by C.B.I. and threat to life and liberty claimed and inspection of files within 48 hours requested. It was held that as the appellant is freely performing his duties as a government official and is leading a normal life there is no perceived threat to his life and liberty.
- (iii) In Rahul Mangaonker V/s. Prime Minister's Office and others (Appeal No.CIC/WB/2006/00069 dated 27/07/2006) where a request made for information on four different issues related to Sardar Sarovar Dam and Narmada Bachao Andolan under proviso to Sec.7(1) of the Act. It was observed that invocation of the proviso to Sec.7(1) of the Act not warranted.

In the factual matrix of this case, I do not think that it would attract penalty or any other thing for the simple reason that it is

not proved substantially that the said information concerns the life and liberty of a person.

7. According to Adv. for respondent No.1 the appellant should file a fresh application. To my mind P.I.O. to consider the same as a normal application and to furnish the information in terms of R.T.I. Act.

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

ORDER

The appeal is allowed. The order of the F.A.A. is set aside. The respondent No.1 to deal with the said application of the appellant dated 9/12/2010 and dispose the same in terms of the R.T.I. Act within 20 days from the receipt of this order.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 4th day of April. 2012.

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