

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.98/SCIC/2011

Mrs. Inacin Fernandes,
R/o.H. No.249/8, Gauravaddo,
Calangute, Bardez-Goa ... Appellant.

V/s.

1. The Public Information Officer (PIO)
O/o.Women and Child Development Department
Panaji-Goa
2. First Appellate Authority
Director of Women and Child Development,
Panaji, Goa ... Respondent

Appellant present

Respondent No.1 and 2 absent.

Adv. N. Dias for respondent No.1 present.

Adv. K. L. Bhagat for respondent No.2 present.

Adv. R. Pednekar for appellant present.

J U D G M E N T
(03/04/2012)

1. The Appellant, Smt. Inacin Fernandes, has filed the present appeal praying that this Hon'ble authority be pleased to call for the records and proceeding in respect of the application dated 31/3/2010 and appeal records from the respondent and after examining the same this Hon'ble Commission be pleased to set aside the order dated 10/5/2011 and the respondent be directed to furnish the information as asked by the appellant.

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

That the appellant vide application dated 31/03/2010 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 failed to furnish the information and hence the appellant preferred appeal before First Appellate Authority/respondent No.2 who by order dated 10/5/2011 dismissed the said appeal observing that the information can not be given as it is confidential in nature. Being aggrieved by the refusal to grant information 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 respondent No.1 is on record. It is the case of the respondent No.1 that the information sought could not be supplied as the same has been referred to J.M.F.C. and that the respondent acted within the provision of law. The respondent denies contents of para No.4 of Memo of Appeal and maintain the direction taken by the respondent is within the provision of law. That the information was not furnished as the matter has been referred to J.M.F.C. that there is no deficiency on the part of the respondent. According to the respondent No.1 appeal is liable to be dismissed.

4. Heard the arguments. Ld. Adv. Shri P. Kamat argued on behalf of appellant and the ld. Adv. Shri N. Dias argued on behalf of respondent No.1. Ld. Adv. Shri K. L. Bhagat argued on behalf of respondent No.2.

Advocate for the appellant referred to the facts of the case in detail. He also referred to application dated 31/3/2010 as well as order of F.A.A. According to him information ought to be furnished. He next referred to Sec.21 of Juvenile Justice

Act. According to him, this action is not attracted in the facts of this case. He submitted that the appeal be allowed and information be granted.

During the course of his arguments, Adv. Shri Dias submitted that information cannot be given so also person given custody cannot be given. He next submitted that the information is not with respondent No.1 and as such respondent No.1 cannot furnish the information and that appeal be dismissed.

Ld. Adv. Bhagat submitted that appellant should file an independent application before the Board.

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 31/3/2010 the information was sought. However no information was furnished on the ground that the matters produced are confidential. It is seen that appellant preferred an appeal before First Appellate Authority. By order dated 10/5/2011 the appeal was rejected. However it was observed as under :-

“Further since the documents sought are of the Court this authority cannot direct the issue of documents. The said documents may be obtained by the appellant by approaching the Competent Authority i.e. C.W.C. which is a bench of Magistrate”

6. Adv. for the appellant contends that Sec.21 referred in the order is not attracted.

7. It is to be noted here as per order of F.A.A. the matter is pending before the Bench Magistrate/C.W.C. Normally in sub-judice matter the disclosure of information is barred if it is expressly forbidden to be published by any court of law or Tribunal or disclosure of which may constitute contempt of Court. This is provided under Sec.8(1)(b) of R.T.I. Act.

In other words where the matter is sub-judice only and no order is passed by any court/Tribunal forbidding publication thereof the information can be disclosed under Sec.8(1)(b). Similarly where the disclosure does not constitute contempt of Court or violate the directions made by the Court, the information can be allowed to be furnished.

8. Advocate Shri Dias for respondent No.1 submits that the information is not with the P.I.O./respondent No.1. According to Adv. Shri Bhagat the appellant should file an independent application.

According to Advocate for the appellant the information is with the authority and in case it was not so the application ought to have been transferred to the said authority.

9. Normally under R.T.I. an information seeker must get information. That is in fact the mandate of R.T.I. Act. Now in the instant case, the respondent No.1 categorically states that the information is not with them. If that is so, the P.I.O. ought to have transferred the application to the concerned authority having information.

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

ORDER

The appeal is partly allowed. The P.I.O./Respondent No.1 is hereby directed to transfer the application of the appellant dated 31/3/2010 to the concerned authority having information within 5 days from the date of receipt of this order.

On transfer the concerned P.I.O. to deal with the same and dispose the same within the statutory period of 30 days.

The appellant be informed accordingly.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 3rd day of April.
2012.

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