

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

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

**Appeal No. 263/SIC/2010**

Mr. Savio J. F. Correia,  
SS-1, Newton Apartments-II,  
Mangor Hill,  
Vasco-da-Gama-Goa

.... Appellant

V/s.

1) Public Information Officer,  
Additional Director (Vigilance),  
Directorate of Vigilance, Serra Bldg.,  
Near All India Radio, Altinho,  
Panaji - Goa

... Respondent No.1.

2) First Appellate Authority,  
The Secretary (Vigilance),  
Government of Goa,  
Secretariat,  
Porvorim - Goa

... Respondent No. 2.

Appellant in person.

Shri Suresh Dessai representative of Respondent No.1

Adv. Smt. H. Naik for Respondent No. 1.

**J U D G M E N T**  
**(23.07.2012)**

1. The Appellant, Shri Savio J. F. Correia, has filed the present appeal praying that the P.I.O./Respondent No.1 be directed to furnish full, correct and complete information sought by the Appellant in his application dated 26.08.2010 free of cost immediately; that penalty under Section 20(1) of the R.T.I. Act be imposed on the P.I.O. for refusal to furnish information to the Appellant malafidely and without reasonable cause and that disciplinary action be recommended against P.I.O./Respondent No. 1 under applicable service rules for malafidely denying the Appellant's request for information.

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

That the Appellant, vide application dated 26.08.2010, 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 Appellant received a communication from the P.I.O. – Respondent dated 23.09.2010. That the Appellant found that the impugned communication denied information pertaining to query No. 1(a) as it allegedly attracted Section 8(1)(e), (j) and the remainder of the communication contained information that is false, incomplete, misconceived and misleading. Being not satisfied the Appellant preferred an appeal before the First Appellate Authority ('F.A.A.)/Respondent No.2. However the Appellant did not receive any communication from the Respondent No.2/F.A.A. as on date nor has any order been made by the said Respondent disposing the Appeal. Being aggrieved the Appellant has filed the present appeal on various grounds as set out in the Memo of Appeal.

3. The Respondent No. 1 resists the Appeal and the reply of the Respondent No. 1 is on record. In short it is the case of the Respondent No. 1 that it is true that application was received and reply furnished. The Respondent No. 1 denies that information is false, etc. It is the case of the Respondent No. 1 that the First Appellate Authority has rightly passed the order after considering the relevant provision of the Act and order is self-explanatory. The Respondent No. 1 denies the grounds as set out in the Memo of Appeal being false and misleading. It is further the case of the Respondent No.1 that as per Central Vigilance Guidelines in terms of the "Agreed List" the department of Respondent No. 1's Office cannot disclose the information the same being confidential.

4. Heard the arguments. The Appellant argued in person and the learned Adv. Smt. H. Naik argued on behalf of the Respondent No. 1.

Appellant submitted that Section 8(1)(e)(j) is not applicable. He referred in detail to the reply and submitted that Respondent No. 1 could refer or tell about the department.

During the course of his arguments the learned Adv. Smt. H. Naik submitted that information is in progress/pending. According to her question 5 is not clear.

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 26.08.2010 the Appellant sought certain information consisting of 3 points at Sr. No. 1(a) to (i), 2 and 3. By reply dated 23.09.2010 the Respondent No. 1 furnished the information. It is seen that some information was not furnished as it attracts Section 8(1)(e)(j) and some since it was with concerned Department. Being not satisfied the Appellant preferred an appeal, however, according to the Appellant the same was not decided.

According to the Advocate for Respondent No.1 the same was decided. Copy of the order is on record. By order dated 24.01.2011 the Appeal was dismissed. The F.A.A. also held that Section 8(i)(h) of the R.T.I. Act comes into play.

It is to be noted here that R.T.I. Act in general is a time bound programme between the Administration and the citizen – requesting information and every step will have to be completed within the time for presentation of First Appeal and disposal by the Appellate Authority. First Appeal is to be disposed within 30 days or extended period of 15 days but with reasons. It appears that First Appeal was filed on 05.10.2010 and the same was disposed on 24.01.2011 that is, much beyond time. In any case F.A.A. to take note that he should maintain the time schedule in future.

6. First I shall refer to Section 8 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) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) .....

(g) .....

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

(i) .....

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual unless Central Public Information Officer or the State Public Information Officer or the Appellate Authority as the case may be is satisfied that larger public interest justifies the disclosure of such information.

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

There is no dispute that Section 8 is a restriction on the right to access of information and therefore is to be strictly construed. There is also no dispute with the proposition that information 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.

7. Coming to the information sought. Item No. 1/Sr. No. 1(b), (c), (d), (e), (f), (g) it is mentioned that records are maintained by concerned Departments and information may be sought from respective Departments.

Normally these records ought to be with Respondent No.1. Under R.T.I. only available information or information as held by the Public Authority is to be given. In case it is not there the P.I.O. must direct the information seeker to the concerned authority. Under Section 5 the P.I.O. is designated person or representative of the Department who is responsible to ensure compliances with R.T.I. Act and facilitate the requester in obtaining the information. Reading of Section 5 of the R.T.I. Act reveals that every P.I.O. should extend all reasonable assistance in making the information available.

P.I.O. can also take the help of Section 6(3). Sub-Section 3 of Section 6 carves an exception to the requirement of sub-Section (1). As per the same where a Public Authority to whom an application is made, finds that

information demanded is not with it but held by some other authority, it is duty bound to transfer the application for information to the concerned authority under intimation to the applicant/information seeker. Intention of the legislature appears to be good considering the R.T.I. Act is a people friendly Act. The pure objective behind enacting this provision is perhaps to lessen the travails of an information seeker, lest he is lost in the labyrinth of procedure technicalities.

P.I.O. in my view could transfer under Section 6(3).

Information at 1(h), (i) and 2 are furnished.

Regarding item/Sr. No. 3 according to P.I.O. query was not clear. To my mind P.I.O. could obtain clarification if needed and then furnish the information.

8. Regarding 1(a) and (i).

1(a) it is stated that information cannot be furnished as it attracts Section 8(1)(e)(j), (i) cases are under investigation. This reply was furnished on 23.09.2009. By now investigation may be over. If investigation is over then P.I.O. can furnish the information. In case it is not so then the stage of investigation can be disclosed.

I have perused some of the rulings on the point particularly of Vigilance matters.

In Dr. Lalit Kumar v/s. Vigilance Department DDA (Appeal No. CIC/WB/A/2006/00267 dated 25.05.2006) it was held as under:-

“This can easily be provided unless it is within Section 8(1)(h) of the R.T.I. Act whereby it can only be denied if information provided will impede the process of investigation. In this case there is no claim that it would impede the apprehension or prosecution of any offender, the only other grounds on which it could be denied under the said clause of the Act. P.I.O. Shri D.G. Dwivedi is directed to intimate to the Appellant Dr. Lalit Kumar the present status of the investigation in the light of above.”

In Shri D. L. Chandok v/s. Central Warehousing Corporation (Appeal No. 121/ICPB/2006 F. No. PBA/06/140 dated 09.10.2006) it was observed

that even when a departmental enquiry is on, the information sought in relation to such an enquiry, particularly by a third party, can be denied in terms of Section 8(1)(h). Therefore, the decision of appellate Authority was upheld.

In Shri Ravinder Kumar Bansal v/s. M.C.C. (Appeal No. CIC/WB/A/2006/0008200053 dated 17.06.2006) it was observed as under:-

“Under the R.T.I. Act, 2005 only information that is held by a public authority can be provided to an applicant. Evidently, if any enquiry is not completed the conclusions of that enquiry cannot be deemed to have been under the control of the authority.”

Even otherwise in a situation like this a wise P.I.O. can strike a balance whereby information can be furnished and at the same time confidentiality can be maintained. Though in a different context I would like to quote a ruling which is as under:-

In Shri Kuldeep Kumar, New Delhi V/s. Delhi Police, Police Head Quarters, New Delhi [F. No. CIC/AT/A/2006/00071 dated 11.05.2006] a fine balance between the imperative of confidentiality of sources of information, witness protection etc. has been struck. It is necessary to quote the same:-

“The information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes, is exempt from disclosure under section 8(1)(g) of the Act. Pursuant to this law, the details of the police case diary cannot be disclosed to a requester as it may have far reaching consequences in terms of confidentiality of the information received by the police and may even endanger the physical safety of those examined by the police authorities. In a case where some information was already given to the appellant, the Commission observed that some more information without unduly compromising the investigation or the witnesses, etc. can be given to him. The Commission felt while still recognizing that in all requests for information under the RTI Act, especially when they pertain to the law enforcement authorities, it becomes necessary to strike a fine balance between the imperatives of

the confidentiality of the sources of information, witness protection and so on, with the right of the citizen to get information. The Commission, therefore, directed the first Appellate Authority and the PIO that balance will not be unduly affected if the following information is furnished to the appellant: -

1. The dates on which the Investigating Officer actually investigated the case;
2. Dates on which actions, such as, searches etc. connected with the investigation; were taken;
3. A gist of the depositions of those examined by the police without disclosing names or details which could compromise witness/source confidentiality and safety.

9. In view of the above the P.I.O./Respondent No. 1 to furnish the available information in respect of point 1(a) and (i) if the investigation is complete. In case the investigation is pending then to intimate the Appellant the present status of the investigation/inquiry in the light of the observations in para 8 hereinabove. Regarding para 1(b), (c), (d), (e), (f) and (g) the available information can be given. In case the information is not available then to transfer the same under Section 6(3) to the concerned Department. Regarding point No. 3 the P.I.O. can seek clarification, if any, from the Appellant and Appellant to furnish the same. Hence, I pass the following Order:-

### **ORDER**

The Appeal is allowed. The Respondent No. 1/P.I.O. is hereby directed to furnish the information in respect of point No. 1(a) and (i) if the investigation is complete and in case investigation is pending then to intimate the Appellant the present status of the investigation/inquiry in the light of observations in para 8 hereinabove within 30 days from the date of receipt of this Order.

Regarding para 1(b), (c), (d), (e), (f) and (g) the available information can be given. In case the information is not available then to transfer the same under Section 6(3) to the concerned Department within 5 days from

the date of receipt of this Order. Regarding point No. 3 the P.I.O. can seek clarification, if any, within 8 days from the date of receipt of this Order.

P.I.O. to see that everything is done **within 30 days from the date of receipt of this Order.**

The Appeal is accordingly disposed off.

Pronounced in the Commission on this **23<sup>rd</sup> day of July, 2012.**

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







