

GOA STATE INFORMATION COMMISSION AT PANAJI

CORAM: Shri Afonso Araujo, State Information Commissioner

Appeal No. 253/2008

Shri Kashinath Shetye,
Bambino Building, Alto Fondvem,
Ribandar, Tiswadi – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Supdt. of Police, North,
Panaji - Goa.
2. First Appellate Authority,
The Inspector General of Police, Goa,
Police Headquarters, Panaji – Goa
3. Shri Dinesh Vaghela,
Nav Gauri Apartments,
Opp. ICICI ATM, Porvorim, NH-17, Goa.

..... Respondents.

Appeal No. 254/2008

Smt. Sanyogita Kashinath Shetye,
Bambino Building, Alto Fondvem,
Ribandar, Tiswadi – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Supdt. of Police, North,
Panaji - Goa.
2. First Appellate Authority,
The Inspector General of Police, Goa,
Police Headquarters, Panaji – Goa
3. Shri Dinesh Vaghela,
Nav Gauri Apartments,
Opp. ICICI ATM, Porvorim, NH-17, Goa.

..... Respondents.

Appellant present in person.

Adv. Mrs. Harsha Naik for Respondents No. 1 and 2.

Mrs. Theresa Vaghela for Respondent No. 3.

COMMON JUDGMENT

(Per Afonso Araujo)

Since the Appellants in the Appeal No. 253/2008 and 254/2008 are husband and wife respectively; the Respondents are the same and a common question of law is involved, the two Appeals are disposed off by a common Judgment.

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2. In these Appeals, the grievance of the Appellants is that when the Respondent No. 3 made a request for information under the Right to Information Act, 2005 (for short the RTI Act) to the Public Information Officer – the Respondent No. 1, the later should not have provided the information to the Appellant and First Appellate Authority – the Respondent No. 2 should not have decided the Appeals until and unless the information sought is considered as third party information.

3. The RTI Act is a complete code having both substantive and procedural law. As per section 3 of the RTI Act, all citizens have a right for information which can be denied only if the provision of sections 8 and 9 of RTI Act are attracted. Sections 6 and 7 prescribed the procedure for obtaining information and disposing the information sought respectively and in cases the information sought is required to be obtained from the third party the procedure prescribed in section 11 under the RTI Act is to be followed as third party information. The third party is defined in section 2(n) and means person other than the citizen making a request for information and includes a public authority and the procedure to be followed is encompassed in the provisions of section 11 of the RTI Act. Sub-section (1) of section 11 says that when any Public Information Officer intends to disclose any information or record or part thereof on the request made under the RTI Act which relate to or has been supplied by the third party and has been treated as confidential by that third party the Public Information Officer 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 the Public Information Officer, 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 the disclosure of information. The proviso to sub-section says that except in cases of trade and commercial secret protected by law, the disclosure may be allowed if the public interest in disclosure outweighs any importance any possible harm or injury to the interest of such third party. Sub-section (2) says that where a notice is served by the Public Information Officer under sub-section (1) where 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 may give an

opportunity to make representation against the proposed disclosure. Further, sub-section (3) says that notwithstanding anything contained in section 7, the Public Information Officer shall within forty five days after the 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 and sub-section (4) says that 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.

4. On going through the provisions of section 11 of the RTI Act, it indicates that the decision to provide the third party information rest entirely on Public Information Officer. Once a request is made which is related or has been supplied by the third party and has been treated as confidential by that third party, a Public Information Officer has to give notice to this third party of his intention to disclose the information and after obtaining his say and by taking into consideration the same, decide whether the information should be disclosed or not. It is not open to any person to claim to be a third party and seek intervention in the proceedings under the RTI Act. If the Public Information Officer based on the request made for the information comes to a conclusion that the information sought pertains to the affairs of the third party which can be considered as confidential by the third party then the Public Information Officer first will notify the said person about the disclosure of this information and after receiving the reply, decide whether the information should be disclosed or not. However, this decision should not be arbitrary but based on the submission made by the third party and also by taking into consideration the public interest vis-à-vis third party interest.

5. From the tone and tenor of the application made by the Respondent No. 3 to the Respondent No. 1 the information sought is in respect of criminal cases wherein the Appellants are one way or other involved in those criminal cases. The mere fact that in the information required to be provided by the Respondent No. 1, the Appellants are parties and their names figures in the complaint before the Police, it does not indicate that the information related to the Appellants has any traits of

confidentiality and the Public Information Officer need not considered them as third parties so as to give them notice that he intends to disclose the information sought and obtain their say in the matter.

6. Since it is in the exclusive domain of the Public Information Officer to decide whether the information sought should be disclosed or not of the third party and from the facts mentioned in the request by the Respondent No. 3 and information provided by the Respondent No. 1, there is nothing on which the Appellants can claim the information required to be confidential, there are no merits in these Appeals. Hence, the following order: -

ORDER

The two Appeals are dismissed.

Pronounced in the open court on this 31st day of July, 2009.

Sd/-
(Afonso Araujo)
State Information Commissioner

