

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 79/2009

Shri Pandurang @ Uday Kamat Maad,
Madegal, Kakoda, Curchorem – Goa.

..... Appellant.

V/s.

1. Shri Pandurang Raut,
The President,
Maharastravadi Gomantak Party,
Near Industrial Estate, Karaswada,
Mapusa – Goa.
2. Shri P. M. Borkar,
First Appellate Authority,
The Commissioner,
Goa State Election Commission,
Junta House, Panaji - Goa.

..... Respondents.

J U D G E M E N T **(05-02-2010)**

1. The Appellant, Shri Pandurang @ Uday Krishna Kamat Maad, has preferred this Appeal praying that information as sought be furnished to him.

2. By an application dated 31/05/2009, the Appellant sought certain information from President (Shri Pandurang Raut), Maharastrawadi Gomantak Party. It appears that the same was not furnished and as such the Appellant preferred the Appeal before the Commissioner, Goa State Election Commission. That the said Commission by its letter dated 11/08/2009 informed the Appellant that State Election Commissioner is not the First Appellate Authority against the President of Maharastrawadi Gomantak Party and further stated that the Appellant may file the Appeal before the Appropriate Authority. Apparently being aggrieved by the said order/letter the Appellant has preferred the present Appeal as can be seen from the Memo of Appeal.

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3. The Respondent No. 1 and 2 resist the Appeal and their say is on record.

According to Respondent No. 1, he represents a political party in his capacity as President and this political party is not a "Public Authority" as defined under section 2(h) of the Right to Information Act (for short the 'RTI Act') and therefore the Respondent No. 1 is not obliged to comply with the requirement laid down under Chapter II of this Act. That the relation between the Appellant and this party are not like a relation between a citizen and Public Authority. The Respondent No. 1 also raised some doubt about the signature of the Appellant on the applications on record.

According to Respondent No. 2, the State Election Commission is constituted under Article 243K of the Constitution of India in order to conduct elections to local bodies like Village Panchayats, Zilla Panchayats, Municipal Councils and Municipal Corporations. That Elections to the Vidhan Sabha and Lok Sabha are beyond the functioning of the Goa State Election Commission. The Respondent No. 2 also refers to the Application filed by the Appellant seeking information about the Election expenditure of the said political party for assembly elections that were held in May, 2007. It is also the case of the Respondent No. 2 that First Appeal was filed before Respondent No. 2 and he disposed off the Appeal stating that the State Election Commissioner is not the First Appellate Authority against the President of Maharashtra Gomantak Party. That the Appellant was told to file the Application before appropriate Authority. It is also the case of Respondent No. 2 that they deal with elections pertaining to local bodies and that political parties are not allowed to participate in local body elections. According to Respondent No. 2 the Appeal is liable to

be dismissed.

4. Heard the arguments of parties i.e. Appellant, Shri R. Mardolker and Adv. Shri Bhatkuly for Respondent No. 2.

In his written reply, Appellant states that Respondent's party receives funds from various Semi-Government organizations and also from various donors. That since the party receives funds from various members from the public the Maharashtra Gomantak Party is covered under definition as "Public Authority" under section 2(h) of RTI Act.

According to Respondent No. 1, it is a political party and not covered by RTI Act.

According to Respondent No. 2, they are not at all concerned and that application ought to have been filed before appropriate Authority.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties.

The preamble to the Act states that this Act was enacted to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. Section 2(a) defines "appropriate Government" as under:-

(a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly ---

- (i) by the Central Government or Union Territory administration, the Central Government;
- (ii) by the State Government, the State Government;

In view of this definition, the appropriate Government means the Central Government, Union Territory Administration or the State Government depending on as to whether the concerned public authority is established, constituted or controlled or financed by funds provided directly or indirectly to the Central Government, Union Territory or the State Government. It is pertinent to note the definition of 'public Authority': -

- 2(h) "public authority" means any authority or body or institution or self Government established or constituted-----
- (a) by or under the Constitution;
 - (b) by any other law made by Parliament;
 - (c) by any other law made by State Legislature;
 - (d) by notification issued or order made by the appropriate Government, and includes any ----
 - (i) body owned controlled or substantially financed;
 - (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

Admittedly the Maharashtra Gomantak Party was not established or constituted under any enactment of Parliament or State Legislature or by any notification or order by the Government. It is also an admitted position that Maharashtra Gomantak Party is not owned or substantially financed by the State Government. Even if it is treated as a Non-

Government Organization, it is not substantially financed by the Government. It is also not controlled by the State or Central Government. No doubt Constitution of India provides for party system and in our polity there is multi party system. Election Commission of India is there to oversee the working of parties, elections etc.

6. Political parties are a unique institution of the modern Constitutional State. These are essentially civil society institutions and are therefore non-Governmental. The unique and ironic aspect is the fact that inspite of being non-governmental, political parties come to wield or directly or indirectly influence, exercise of governmental power.

It is also a fact that under Representation of People Act, 1951 and under the Conduct of Election Rules, 1961 certain obligations are on political parties which they have to perform. The Appellant has addressed the letter to the President (Shri Pandurang Raut). No mention of Treasurer in the application. Whether President is the Public Information Officer of the party is not known.

According to the Appellant the party gets donations from Semi-Government organizations and also donations from public and as such covered under definition as 'public Authority'. However, the Applicant has not shown that the State exercises any direct or indirect control over the affairs of the Maharashtra Gomantak Party.

Again it is to be noted here that Respondent No. 2 the State Election Commission has stated that the Appellant was told to file the Application before proper Authority but he did not. This Commission also suggested that Appellant should join the proper Authority however he has

not done so. If the proper Authority had the information regarding the Maharashtra Gomantak Party the Appellant perhaps would have got the same. In any case the proper authority is not before the Court. The information sought is from President (Pandurang Raut) of Maharashtra Gomantak Party.

7. Looking at the pros and cons of the matter the Maharashtra Gomantak Party is not a Public Authority in terms of provisions of section 2(h) of the RTI Act. Section 4 and 5 of the RTI Act provide about obligations of Public Authorities and it directs the Public Authority to appoint Public Information Officer etc. Under section 6 request for obtaining information can be made from Public Authority. If it is not a Public Authority, the information cannot be sought under Right to Information Act.

It is rather strange and curious to note that the laws of the land do not make it mandatory for political parties to disclose the sources of their funding and even less so the manner of expending those funds in the absence of such laws the only way a citizen can gain access to the details of funding of political parties is through their Income Tax Returns filed annually with Income Tax authority. So also other authority i.e. Election Commission Authorities.

I have to agree with Shri Mardolker when he contends that it is not Public Authority.

Apart from that there is also non-joinder of proper parties.

8. The RTI Act recognizes that a functional democracy requires an informed citizenry. Normally disclosure of information is a norm and non-

disclosure exception. However, in the factual matrix of this case this Commission cannot oblige the citizen by providing information in view of what is observed above. The Appeal therefore fails and is liable to be dismissed. Hence, I pass the following Order: -

ORDER

The Appeal is hereby dismissed.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 5th day of February, 2010.

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

