

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 143/2009

Shri Allan Falleiro,
H. No. 400, Toleband,
Loutolim, Salcete, Goa – 403718.

..... Appellant.

V/s.

1. Public Information Officer,
Office of the Captain of Ports Department,
Panaji - Goa.
2. First Appellate Authority,
Office of the Captain of Ports Department,
Panaji - Goa.

..... Respondents.

Appellant in person.

Adv. N. P. Dias for Respondent No. 1.

Shri Jose Fernandes, authorized representative on behalf of Respondent
No. 2.

J U D G E M E N T **(17-02-2010)**

1. The Appellant, Allan Falleiro, has preferred this Appeal praying that the information sought be furnished and that Public Information Officer be punished with fine for not furnishing the information.

2. The facts leading to the present Appeal are as under:- That the Appellant had requested for information under Right to Information Act, 2005 ('RTI' Act for short) from the Public Information Officer of Captain of Ports Department. That since no information was provided till 30/09/2009, the Appellant preferred a First Appeal with the First Appellate Authority of the Captain of Ports Department. It is the case of the Appellant that incomplete and misleading information was received by letter dated 25/09/2009 that the information sought could not be given. That the appeal was admitted, heard and the order was passed upholding the decision of Public Information Officer.

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Being aggrieved by the Order of the First Appellate Authority, the Appellant has preferred this Appeal on the ground as mentioned in the Memo of Appeal.

3. The Respondents resist the Appeal and the reply of Respondent No. 1 is on record. It is the case of the Respondent No. 1 that by letter dated 25/09/2009 he intimated the Appellant that information cannot be provided as the information sought was/is under investigation/inquiry as there being nothing in hand with the Public Information Officer to supply to the Appellant on that day i.e. 30/09/2009. Respondent No. 1 also refers to section 8(h) to show that information sought is exempted. Respondent No. 1 also refers to the Order of the Appellate Authority. In short according to Respondent No. 1, the Appeal of the Appellant is malafide and misleading without any substance and that the same be dismissed.

4. Heard the arguments. Appellant argued in person. Adv. Shri N. Dias argued on behalf of the Respondent No. 1.

Appellant submitted that information under Question 1, 2 and 4 can be given and nothing hampers investigation. According to him information under Question 3 cannot be given. According to him the information sought does not come under section 8(h). He also referred to the Memo of Appeal.

5. During the course of his arguments Adv. Shri Dias referred to the facts of the case and submitted that whatever was available was furnished. According to him investigation is pending and as such information sought cannot be given at this stage.

6. 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 information sought is to be provided or not?

It is seen that by letter dated 27/08/2009, the Appellant sought certain information. The said information was in the nature of 4 questions. It is seen that Respondent No. 1 by letter dated 25/09/2009 informed the Appellant that investigation/inquiry is in progress. Apparently this letter is in time. However, on 30/09/2009 the Appellant preferred the Appeal before First Appellate Authority. It is seen that the Appeal was disposed off by Order dated 12/11/2009 directing the Public Information Officer/Respondent No. 1 to furnish all the information to the Appellant sought by him immediately on completion of the inquiry.

It is apparent that the information sought has not been furnished so far.

In short the information is not furnished as investigation/inquiry is pending.

Section 8(1)(h) lays down as under: -

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen -----

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

Ordinarily all information should be given to the citizen, but there are certain information which have been protected from disclosure. This

section is an exception to the general principles contained in the Act. This provision exempts disclosure of information which would impede the process of investigation or apprehension or prosecution of offenders. Public Information Officer and the First Appellate Authority have not shown satisfactory reasons as to why the release of such information would hamper the investigation process.

7. I have gone through some of the rulings on the point including the rulings of State Information Commissioners as well as C.I.Cs. There is no dispute with the proposition that investigation 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 investigation. The authority which withholds information must show satisfactorily as to why the release of such information would hamper the investigation process. In the case at hand the incident of collision took place in June 2009/August 2009. To a query from this Commission it is stated in black and white by Respondent No. 2 that the inquiry that is pending is Departmental. The Order of the First Appellate Authority shows that all the information needs to be furnished immediately on completion of inquiry. Now the incident is of June/August 2009 as per the application. Much time has been passed and inquiry by now should have been over. One cannot wait till eternity for inquiry to get over. And if one waits then it would be a good excuse for dodging the demand for information thereby denying the very purpose of RTI Act.

8. Considering the fact that inquiry is pending since long this Commission is of the opinion that in the interests of fair play and equity to

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fix the time frame for completing the inquiry. Such an approach is found favour and in fact fixed time frame in (1) Shri K. K. Tamrakar V/s. Food Corporation of India [Appeal No. CIC/PB/A/2008/01376/LS Date of Order 17/03/2009] and in Shri Milap Choraria Delhi V/s. (1) Ministry of Civil Aviation, New Delhi (2) Department of Disinvestment, New Delhi [No. CIC/OIC/A/2006/00164/ dated 08/09/2006].

9. Now coming to the information sought it is mentioned that it was learnt from Newspaper reports that there were two incidents of collisions of barges in Cumbarjua Canal that connects the river Zuari & Mandovi during the months of June 2009/August 2009 causing stoppage of Navigation and losses. The information sought was on this incident. The information is in the nature of four questions. Q.1 is asking certified copies of report of the said incidents. To my mind this Question No. 1 is a valid query for information and a person not involved in investigation should be entitled to receive the same notwithstanding the fact that investigation is going on.

Question No. 2. This relates to giving of certified copy of the investigation carried out and findings of the investigation in both the cases of the said collision. Now this request stands on two limbs: - first copy of investigation carried out and findings of investigation in both the cases. By first the Appellant is seeking only preliminary reports of the investigation. This to my mind could be given. Regarding 2nd limb the same could not be given at this stage unless the inquiry is complete.

Question 3 cannot be given at this stage as the inquiry is going on. During the course of his arguments the Appellant also does not press this question.

Question 4. This question again is a broad question. It would not be proper to give the blanket inspection at this stage. However, inspection of preliminary reports in respect of part of Question 2 as mentioned above can be given. However, no inspection of complete file regarding findings, action taken etc. can be given at this stage.

10. In view of all the above, Public Information Officer is directed to furnish information to the Appellant in respect of Question 1 including show cause notice if any and First part of Question No. 2 as mentioned above within 15 days from the receipt of the Order. Public Information Officer is further directed to give inspection of the file in respect of preliminary reports of the investigation only. This inspection to be given within 8 days from the date of written request from the Appellant.

Respondents are further directed to complete the investigation within 30 to 45 days and to furnish the information to the Appellant within 15 days after the completion of the inquiry. The Respondents to intimate the outcome of the same/compliance to the Commission on 21/04/2010.

The Appeal is accordingly disposed.

Pronounced on this 17th day of February, 2010.

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

