

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 98/2009

Shri Prakash B. Sardessai,
C/o Sardessai Egg. Works,
Cortalim – Goa

..... Appellant.

V/s.

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

..... Respondents.

Appellant in person.

Respondent No. 1 in person.

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

Shri Jose J. Fernandes, U.D.C., authorized representative for Respondent
No. 2.

J U D G E M E N T **(15-03-2010)**

1. This is an Appeal preferred by the Appellant, Prakash B. Sardessai praying for direction to the Public Information Officer and Asst. Public Information Officer to furnish the said information sought for inspection of file and thereafter to issue certified copies of documents sought; and that office of Asst. Public Information Officer being the same person holding access to information he being Asst. Public Information Officer under section 5(5) of the Act, appropriate directions be issued to avoid miscarriage of justice, and to differentiate these offices as provided under the Act and the same be designated to different senior person as per the Act.

...2/-

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

That the Appellant vide his letter dated 8/7/2009 sought certain information under Right to Information Act, 2005 ('RTI' Act in short). That the Public Information Officer vide letter dated 22/7/2009 refused to furnish said information sought for inspection of file. That Public Information Officer had stated during personal hearing that the information which is furnished to him by the Department can only be given, whereas the access to the said is with the Captain of Ports who for all practical purposes is Public Information Officer under section 5(5) of the Act and at the same time otherwise he happens to be designated as Asst. Public Information Officer. That this has resulted in obstructing the information by playing gimmicks by the officers concerned of the Department to hide and suppress the information sought, to harass the Appellant and intentionally delay and obstruct the furnishing of information with malafide intentions. That Public Information Officer and Asst. Public Information Officer in connivance with one another have mischievously suppressed and hidden the information sought with the fear that, the misuse and abuse of public office, probably undertaken by them should not be exposed. That this has resulted in suppressing the information as the same authority cannot sit of adjudicating on information accessible to him being Public Information Officer for that purpose as well designated A.P.I.O. That Asst. Public Information Officer is authority to review the order of Public Information Officer but Asst. Public Information Officer happens to be Public Information Officer under section 5(5) and therefore, delegated his power of review to Public Information Officer his subordinate officer, who abused the same. That the order of refusal of information is bad, erroneous and mischievous.

Being aggrieved by the said Order the Appellant has preferred the present Appeal.

3. The Respondents resist the Appeal and reply of the Respondent No. 1 is on record. Rejoinder of Appellant and rejoinder of Respondent No. 1 are on record.

In short it is the case of the Appellant that Public Information Officer/Respondent No. 1 vide letter No. A-11060(226)2258 dated 22/7/2009 was kind enough to reply to the Appellant conveying therein that the matter is sub-judice since it is before the Hon'ble Dy. Collector, Mormugaon and therefore, desired information has not been furnished. Respondent No. 1 admits about the Order passed by First Appellate Authority directing the Public Information Officer/Respondent No. 1 to furnish the information after reviewing the matter within 20 days of the said Order. It is further the case of the Respondent No. 1 that Public Information Officer/Respondent No. 1 have not supplied the information to the Appellant as the dealing hand/concerned officials had informed the Public Information Officer/Respondent No. 1 that the information given earlier is one and the same and therefore, no fresh information to be supplied to the Appellant. It is also the case of the Respondent No. 1 that no information is hidden or suppressed and that they have not violated any rules.

4. Heard the Appellant and Adv. N. Dias for the Respondent No. 1. Appellant argued on similar vein as mentioned in the Memo of Appeal and rejoinder. In short according to him no information is furnished and the same has been suppressed.

According to the Advocate for Respondent No. 1 matter is sub-judice and as such no information/inspection could be provided.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The short point that arises for my consideration is whether inspection is to be provided or not?

It is seen that the Appellant filed an application dated 8/7/2009 under RTI Act. The request was to inspect the file. Reply dated 22/7/2009 was sent stating that since the matter is sub-judice before the Hon'ble Court of Dy. Collector, Mormugao at Vasco-da-Gama the information cannot be furnished. It is seen the Appellant preferred an Appeal before First Appellate Authority (F.A.A. for short). The F.A.A. passed the Order dated 10/9/2009. The relevant part is as under: -

“On hearing both the parties, the Public Information Officer, herein known as Respondent, is directed to review the matter and furnish the required information accordingly to the Appellant within 20 days from the date of this Order.”

It is seen that F.A.A., in fact, directed to furnish the information. No doubt there is mention of reviewing the matter. The Public Information Officer instead of furnishing the information or complying with the Order again refused to comply unmindful of the fact that direction was from the Appellate Authority. The said letter is dated 25/9/2009. (Exhbt. F to the Memo of Appeal).

6. It is to be noted here that Right to Information Act, 2005 has been enacted to provide for a legal 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. No democratic Government can survive without accountability and the basic postulate of Accountability is that people should have information about the functioning of Government citizens should know the facts, the true facts. RTI Act ensures maximum disclosures and minimum exemptions consistent with the constitutional provisions prescribing at the same time confidentiality of sensitive information.

7. It is seen Respondent No. 1 has not elaborated but has stated that matter is sub-judice. Probably the Respondent is referring to section 8(1)(b). Section 8(1)(b) exempts disclosure of information:-

- (i) which has been expressly forbidden by any court of law or tribunal; or
- (ii) the disclosure of which may constitute contempt of court.

It is pertinent to note that RTI Act provides no exemption from disclosure requirement for sub-judice matters. Therefore, from the above, only information which has been expressly forbidden by any court of law is exempted and mere pendency of a case before a Court/Tribunal does not signify its exemption. If Public Information Officer refuses to provide information on the ground that the matter is before any Court, it would be incorrect unless it is proved that the disclosure of the information will amount to contempt of Court. Public Information Officer/Respondent No. 1 does not mention any of the sort in his letters.

Viewed purely from the point of RTI Act the right of Appellant to furnish information sought by him is unimpeachable. Moreover F.A.A. directed to provide information.

8. The Appellant has also argued about Asst. Public Information Officer/Public Information Officer and also sought for directions. I think the same is not required, however, both these authorities are expected to work within the parameters of law and there should no cause to complain.

9. In view of all the above, I pass the following Order: -

ORDER

The Appeal is allowed.

The Respondent No. 1 is directed to furnish the information i.e. allow the Appellant to take inspection of the file within 15 days from the receipt of the Order under proper supervision.

In case the Appellant requests for issuing copies of documents etc. the application be considered strictly under RTI Act and Rules, on payment of requisite fees.

The Appeal is disposed off accordingly.

Pronounced in the Commission on this 15th day of March, 2010.

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

