

# GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 108/2009

Ms. Lida Joao,  
H. No. 1001, Bainfol,  
Assolna, Salcete – Goa.

..... Appellant.

V/s.

1. First Appellate Authority,  
Mr. J. N. Braganza,  
Secretary, Legislature,  
Goa Legislative Assembly,  
Goa Legislature, Secretariat,  
Porvorim, Goa – 403 521.
2. Public Information Officer,  
Mr. N. B. Subhedar,  
Goa Legislative Assembly,  
Goa Legislature, Secretariat,  
Porvorim, Goa – 403 521.

..... Respondents.

Appellant in person.

Respondent No. 1 and 2 in person.

## **J U D G E M E N T** **(19-04-2010)**

1. The Appellant, Lida Joao, has preferred this Second Appeal being aggrieved by the Order of the First Appellate Authority.

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

That the Appellant filed an application dated 5/6/2009 under Right to Information Act, 2005 ('RTI' Act for short) seeking certain information. By letter dated 01/07/2009 the Public Information Officer (P.I.O.) informed that the copies of information cannot be furnished as per Rule 182(5) of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly. Being not satisfied the Applicant/Appellant preferred the First Appeal before the First Appellate Authority ('F.A.A.' for short).

...2/-

However, the Appeal was disposed off upholding the decision of the P.I.O. Being aggrieved, the Appellant has preferred the present Appeal on the grounds as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and their say is on record. It is the case of Respondent No. 2 that the Appellant sought copies of the documents submitted by one Miss Joanita Almeida to Ad.Hoc Committee on home under the Chairmanship of Shri Manohar Parrikar, Hon'ble Leader of the Opposition of Goa Legislative Assembly. That the information sought by Appellant cannot be disclosed to any person in terms of Rule 182(5) of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly which provides as "..... All evidence tendered before the Committee shall be treated as secret and confidential till the presentation of the Report of the Committee to the House. Provided that it shall be in discretion of the Committee to treat any evidence as secret and confidential in which case it shall not form part of the Report.....". It is the case of the Respondent No. 2 that no Report was presented by the Chairman of the House Committee to the House. That any evidence given or a document submitted to a Committee is always treated as confidential and no part thereof can be divulged or shown for reference to anyone who is not a member of Committee unless and until the same has been laid on the table. Respondent No. 2 also refer to section 8(1)(c) information, the disclosure of which would cause a breach of privilege of the Parliament or the State Legislature such information cannot be disclosed to citizens. In short, according to the Respondent No. 2, the Appellant is not entitled for the said information.

4. Heard the arguments. The learned Advocate Shri V. Kamat

submitted that information can very well be given. He referred to section 22 of RTI Act. Referring to section 10 of the RTI Act, he submitted that the said letter can be granted. The detail written arguments are filed which are on record. According to Advocate for Appellant section 8 is not attracted in the instant case.

5. During the course of their arguments Respondents submitted that inquiry is not over and Report is not submitted. In view of this, the information is not with P.I.O. He submitted that Committee is headed by Leader of the Opposition. He next submitted that section 8(c) of RTI Act is attracted. According to Respondents the Second Appeal is liable to be dismissed.

6. 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 information sought is to be furnished or not.

At the outset I must say that right to know is a basic right of citizens of a free country. Without adequate information a person cannot form an informed opinion. The 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. Section 3 of the RTI Act ensures that subject to the provisions of the Act all citizens have the right to information. RTI Act ensures maximum disclosures and minimum exemptions consistent with the constitutional provisions prescribing at the same time confidentiality of sensitive information.

Coming to the case at the hand the Appellant by letter dated 5/6/2009 sought certain information that is the allegations made/filed by one Ms. Joanita Almeida and also the documents annexed if any. The same were submitted to the Ad Hoc Committee on Home under the Chairmanship of Shri Manohar Parrikar, Hon'ble Leader of the Opposition of the Goa Legislative Assembly. By letter dated 01/07/2009 the P.I.O. informed the Appellant that the copies of the information cannot be furnished as the Rule 182(5) of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly, which relates to the Committee's power to take evidence or call for papers records or documents which states that:

"All evidence tendered before the Committee shall be treated as secret and confidential till the presentation of the Report of the Committee of the House".

Being aggrieved the Appellant preferred First Appeal, however, the same was dismissed by citing Rule 182(5) of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

7. From the above, it is clear that P.I.O. and First Appellate Authority decided the request/appeal under Rule 182(5) of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly. It is to be noted here that the Application is made under RTI Act, the same is to be decided under the said Act. But P.I.O., F.A.A. did not decide under the provisions of RTI Act at all. No valid reasons have been given. The grounds for refusal of the request should be only from RTI Act and not from any other Act. There is a very thin line dividing the two facets of an individuals personality i.e. P.I.O./Officer and F.A.A./Secretary. However, if

the requested information cannot be disclosed, it should be rejected only on the grounds mentioned in section 8, 9 and/or section 11 of the RTI Act only on this count the impugned Order is liable to be set aside. However, by setting aside the Order this Commission cannot automatically grant the prayer of the Appellant to furnish information.

8. It was contended by Respondents that information cannot be furnished under section 8(c) of the RTI Act. Section 8(1)(c) exempts information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature.

As observed by Dicey Parliamentary Privilege has from the nature of things never been the subject of precise legal definition.

Sir Thomas Erskine May has described parliamentary privilege as "the sum of the peculiar rights enjoyed by each house collectively ..... and by members of each house individually, without which they cannot discharge their functions and which exceed those possessed by other bodies or individuals. Therefore, Parliamentary Privilege is an exemption from the general law made for the proper working of the Parliament when any of these rights are disregarded the offence is called breach of privilege which is punishable under the law of Parliament. All acts or omissions which are either breaches of any specific privilege or which obstruct the Parliament in the performance of its functions or offend its authority or dignity are punishable by each house as contempt. The same is the case with State Legislature.

Article 105 of the Constitution of India deals with powers, privileges etc. of both the houses of Parliament and of the members and committees thereof and Article 194 deals with similar matter in respect of the State.

9. It is the case of the Respondents that no Report was presented by the Chairman of the House Committee to the house. It is also the case of the Respondents that if the said information is disclosed to the Appellant or any other person, it will attract the breach of privilege against the officer who discloses such information by violating Rule 182(5) of the said Rules.

According to Advocate for Appellant such a document can be given and relied on section 22 of the RTI Act. He also submitted that the said letter can be given in view of section 10 of the RTI Act.

It is to be noted that evidence or document submitted to the Committee is considered as confidential and no part of it can be divulged and it cannot be shown unless and until the same has been laid on the table. In such a situation, exemption contained in section 8(1)(c) would apply.

10. I have also perused some of the rulings of the Central Information Commission.

- (i) Priya Pal Bhante V/s. Rajya Sabha Secretariat [Appl. No. CIC/WB/A/2006/00818 dated 29/3/2007]. Copy of the action taken report of the Ministry of Home Affairs on the Report of Committee on Petitions sought. A.A. held that the action taken Report furnished by the Ministry concerned on the Committee's recommendations is meant for examination of the Committee. Under the established parliamentary practice all the documents submitted to a Committee are treated as confidential unless they are laid on the Table of the House or a report thereon is presented to the House. The Commission held that the exemption claimed under section 8(1)(c) is justified.

- (ii) Shailesh Gandhi, Mumbai V/s. Ministry of Petroleum & Natural Gas [Appl. No. CIC/MA/A/2007/00754/ dated 26/12/2007]

The Appellant asked for a copy of T.N.R. Rao Committee Report on Mumbai High North Fire. The Commission observed that the Hon'ble Minister has assured the Parliament for discussion in the matter. In view of this, the exemption claimed under section 8(1)(c) is justified. The C.P.I.O., however, directed to provide the information after the conclusion of debate in Parliament.

10. Unfortunately in this case both the P.I.O. and F.A.A. has not decided the matter in accordance with the RTI Act, 2005. Therefore, the natural corrolary is to remand the matter back. But considering the nature of information and in the fitness of things and in the ends of justice, I would like to dispose the matter taking into consideration section 8(1)(c) of RTI Act.

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

### **ORDER**

The Order of the F.A.A. is upheld in view of Section 8(1)(c). However, the P.I.O is directed to furnish the said information to the Appellant as soon as the inquiry is over and the report is submitted in the house. This is to be furnished within 30 days in the terms of RTI Act.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 19<sup>th</sup> day of April, 2010.

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





