

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 154/2009

Shri Jowett D'Souza,
H. No. 139, Ambeaxir,
Sernabatim, Colva,
Salcete – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Superintendent of Police,
South District Headquarters,
Margao, Salcete – Goa.
2. First Appellate Authority,
The Inspector General of Police,
Police Headquarters, Panaji - Goa.

..... Respondents.

Appellant in person.

Adv. Mrs. Nilima Narvekar for Respondent No. 1.

Adv. Mrs. Harsha Naik for Respondent No. 2.

J U D G E M E N T **(21-04-2010)**

1. The Appellant, Jowett D'Souza, has preferred this Second Appeal praying that Order dated 23/9/2009 passed by First Appellate Authority be quashed, cancelled and set aside; that Respondent No. 1's letter dated 18/8/2009 addressed to the Appellant should be cancelled, quashed and set aside; that the Respondent No. 1 be directed to grant permission for inspection of all files pertaining to the investigation including case diaries or any connected other files in Cr. No. 417/03 registered at Margao Town Police Station; for initiating disciplinary action against Respondent No. 1 and 2 as per section 20 of RTI Act for malafidely invoking section 8(1)(h) and (g) of the RTI Act to deny request of the Appellant and for imposing penalty.

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

That by letter dated 22/7/2009 the Appellant had addressed a letter to the Respondent No. 1 requesting for certain information under Right to Information Act, 2005 ('RTI' Act for short). The information in the nature of inspection of files in Cr. No. 417/03 dated 18/12/2003 registered at Margao Town Police station. That the said request was rejected under section 8(1)(h) and 8(1)(g) of the RTI Act. Being not satisfied, the Appellant preferred the First Appeal before the First Appellate Authority ('F.A.A.' for short)/Respondent No. 2. It is the case of the Appellant that the appeal was heard and the same was dismissed thereby upholding the order/finding of Respondent No. 1.

Being aggrieved by the said Order the Appellant has preferred this Appeal on various grounds which are set out in the Memo of Appeal.

3. The Respondents resist the Appeal and their say is on record. It is the case of the Respondent No. 1 that the request of the Appellant was rejected for reasons specified in section 8(1)(h) and 8(1)(g) of the RTI Act and the decision was intimated to the Appellant and the same was disposed in time. That the First Appeal was also disposed off. It is the case of the Respondent No. 1 that the Appellant was the Complainant in Crime No. 417 of 2003 registered by Margao Police Station, Margao, on 18/12/2003 under section 420 of I.P.C. read with section 10 and 24 of Immigration Act against the offender Shri Walter Tavares. That in order to prosecute the offender Shri Walter Tavares, it was mandatory to obtain sanction order under section 27 of the Said Immigration Act from the Protector General of Immigrants, New Delhi. That the I.O. had written the letter to the Superintendent of Police, South Goa for sanction to prosecute

the said accused under section 10 and 24 read with section 27 of the Immigration Act. Respondent No. 1 also refers to the letter to Under Secretary (Home), Government of Goa regarding obtaining sanction for prosecution etc. and also reminders sent. It is further the case of Respondent No. 1 that the Appellant filed the F.I.R. in this matter and set criminal law in motion. That the F.I.R. is registered and investigation is undertaken and normally even the Court is unable to interfere with the investigation. That if the evidence collected is such then the person who has lodged the F.I.R. even he can be chargesheeted as an accused. That as soon as the appropriate sanction is given by the competent authority, the investigation officer will file the chargesheet against the offender and action taken will be communicated to the Appellant.

4. The case of the Respondent No. 2 is fully set out in their reply which is on record. In short it is the case of Respondent No. 2 that there is no refusal for inspection/files of records. According to the Respondent No. 2 order of F.A.A. is just and proper. That the Respondent No. 2 has rightly upheld the Order of the Respondent No. 1 thereby stating that the case is under investigation and that if the inspection of the file is given, it would impede the process of investigation and source would be disclosed. That the present crime No. 417/03 relates to the offence of section 420 of I.P.C., which is non-bailable. That no chargesheet is filed since the investigation is not complete in all respects and that information can be provided to the Appellant only after the necessary chargesheet is filed. Respondent No. 2 denies the case set out by the Appellant in the Memo of Appeal. According to Respondent No. 2, Appeal is liable to be dismissed.

5. Heard the arguments. The Appellant argued in person. Adv. Smt. N. Narvekar argued on behalf of Respondent No. 1 and Adv. Smt. H. Naik argued on behalf of Respondent No. 2.

6. The Appellant referred in detail to the facts of the case. According to him he is the Complainant and he has every right to see about the investigation and that he is entitled for inspection of files. According to him one of the relation of police is involved. Referring to the reply of Respondent No. 2 the Appellant submitted that P.I. cannot sign and that affidavit ought not to be looked into.

7. Adv. Smt. N. Narvekar argued in similar vein as per reply. According to her, Appellant is the Complainant and she referred to the letters to show about sanction etc. She also submitted about Immigration Act. According to her sanction is required to file the charge sheet.

8. Adv. Smt. H. Naik submitted that P.I. is the representative of Respondent No. 2 and that he is authorized to represent both. She referred to the Judgment and submitted that they are based on the facts of each case. She also argued on similar lines as mentioned in the reply. According to her case is under section 420 of I.P.C. and chargesheet is not so far filed. According to her Appeal is to be dismissed.

9. 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 the relief prayed is to be granted or not?

At the outset I must say 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. From the scheme of the Act it is clear that Right to Information Act ensures maximum disclosures and minimum exemptions consistent with constitutional provisions prescribing at the same time confidentiality of sensitive information. Ordinarily all information should be given to the citizen but there are certain informations protected from disclosure. Section 8 is an exception to the general principles contained in the Act. This provision exempts disclosure of information or apprehension or prosecution of offenders.

In the case at hand, the Appellant made an application dated 22/7/2009 received on 23/7/2009 seeking some information. By reply dated 18/8/2009 the request was rejected under section 8(1)(h) and (g) as it would impede the process of investigation and source will be disclosed. Apparently this is in time. Being aggrieved the Appellant preferred the First Appeal which was received on 31/8/2009. By Order dated 23/9/2009 the same was rejected on the same grounds. Again this is also in time.

10. It is not in dispute that Appellant had lodged the Complaint thereby setting criminal law in motion. The said C.R. is of the year 2003 i.e. C.R. No. 417 of 2003. The request of the Appellant is as under: -

“Kindly allow me to inspect all files including case diaries pertaining to investigation in CR No. 417/03 dated 18/12/2003 registered at the Margao Town Police Station filed by him.”

It is pertinent to note that Appellant had filed the Complaint and what he seeks by this request is to see the progress of the case and wants to see the files. Whether such a request can be granted?

First I shall refer to section 8(1)(g) and (h) which are as under: -

“8(1) -----

- (g) information the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose.
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders.”

In the case at hand question of “identify the source of information” would not come in play as Appellant himself is the Complainant. Being Complainant he must know the progress of the case. Surprisingly and strangely the Cr. is of the year 2003 and the investigation is still going on. 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 information. Both P.I.O. as well as F.A.A. failed to show satisfactorily as to why the release of such information would hamper the investigation process.

11. The eloquent reply to the contentions of the Respondents is found in Bhagat Singh V/s. Chief Information Commissioner & others 2008 [2]

ID 200 (Delhi High Court). In para 12, 13 and 14 it is observed as under: -

“12. The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy. By one fell stroke, under the Act, the maze of procedures and official barriers that had previously impeded information, has been swept aside. The citizen and information seekers have, subject to a few exceptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act. As is reflected in its preambular paragraphs, the enactment seeks to promote transparency, arrest corruption and to hold the Government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein.

13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority

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withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See *Nathi Devi v. Radha Devi Gupta* 2005 (2) SCC 201; *B. R. Kapoor v. State of Tamil Nadu* 2001 (7) SCC 231 and *V. Tulasamma v. Sesha Reddy* 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted."

12. The request of the Appellant is two fold. Firstly he wants to inspect all files pertaining to investigation in CR No. 417/03 dated 18/12/2003. To my mind this request can be granted to some extent. I am fortified in this view by the various rulings of Central Information Commission to which I shall refer hereafter.

Mukesh Bhasney V/s. CST Mumbai [No. CIC/OK/A/2006/00274 dated 15/12/2006. This case was about action taken on corruption complaint and to show all files. The Railways had maintained that inquiry is under process. However, the Commission directed to show to the applicant all files and documents relating to the inquiry for such construction.

In a case Ms. Pushpa V/s, Delhi Police, Delhi, [Application No. CIC/AT/A/2006/00395 dated 19/1/2007] where information sought regarding enquiry in respect of complaint of the Appellant to the Police, the Commission held that it may be disclosed after concealing from it names etc. of persons whose depositions were recorded.

In another case [Pankaj Motwani V/s. Delhi Police, New Delhi, [Application No. CIC/AT/A/2007/00028 to 00030 dated 14/3/2007] enquiry report of the Police in Appellant's complaint may be transmitted to him after concealing from it all details that would identify persons, deponents, witnesses etc. who assist the Public Authority during inquiries and in matters of law enforcement. For documents accompanying the complaint filed by third party against her husband and in-laws before the Police exemption claimed under section 8(1)(g) was upheld by the Commission.

13. Secondly that Appellant wants to see the case diaries. The disclosing the details of case diary will have far reaching consequences in terms of confidentiality of the information received by the police and may even endanger the physical safety of those examined by the Police authorities.

I have perused (i) Mukund Lal V/s. Union of India & another (AIR 1989 S.C. 144) and (ii) Mahabirji Birajman Mandir V/s. Prem Narain Shukla AIR 1965 ALL 494 (at p. 495). This is in respect whether Accused has an unfettered right in respect of case diaries. However, I need not refer to the same as below mentioned ruling of CIC mentions about the same.

I have perused some of the rulings of C.I.C. on this point. However, the eloquent reply is found in the following: -

Shri Kuldeep Kumar, New Delhi V/s. Delhi Police, Police Headquarters, New Delhi [F. No. CIC/AT/A/2006/00071 dated 11/5/2006].

This was regarding Police case diary. Information regarding a theft its investigation and result was sought.

“The Commission noted that Information sought by the appellant forms part of the police case diary – the respondents referred to the judgments of the Hon’ble Supreme Court of India in the Mukund Lal v. Union of India and Mahinder Singh v. Union of India in which the Apex Court allowed the police to treat the Case Diary as a privileged document – Further in Mahabirji Birajman Mandir v. Prem Narain Shukla, the Hon’ble Allahabad High Court had held, “The case diary contains not only the statements of witnesses recorded under section 161 of CrPC, and the site plan or other documents prepared by the Investigating Officer, but also reports or observations of the Investigating Officer or his superiors. These reports are of a confidential nature and privilege can be claimed thereof. Further, the

disclosure of the contents of such reports cannot help any of the parties to the litigation, as the report invariably contains the opinion of such officers and their opinion is inadmissible in evidence” - The Commission observed that disclosing the details of the case diary will have far reaching consequences in terms of the confidentiality of the information received by the police and may even endanger the physical safety of those examined by the police authorities – however, some information can be given without unduly compromising the investigation or the witnesses etc.”

I have perused the order dated 12/9/2008 passed in Writ Petition No. 432 of 2007 (Public Information Officer, S.P., South Goa, Margao V/s. Joao C. Pereira, Hon’ble High Court of Bombay at Goa). Relevant paras are 3, 7 and 8. The Hon’ble High Court observed that the inspection of case diaries of the said crime were not within the scope of order dated 25/9/2006 of Superintendent of Police or Order dated 3/12/2006 of the Dy. Inspector General of Police and as such Complainant could make no grievance before the Commission that he was not provided inspection of case diaries. In other words, the Complainant was only entitled to inspect the file/case papers of Crime No. 74/05 registered at the instance of

In Shri Kuldeep Kumar, New Delhi V/s. Delhi Police, Police Head Quarters, New Delhi [F. No. CIC/AT/A/2006/00071 dated 11/5/2006] a fine balance between the imperative of confidentiality of sources of information, witness protection etc. has been struck. It is necessary to quote the same: -

“The information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes, is exempt from disclosure under section 8(1)(g) of the Act. Pursuant to this law, the details of the police case diary cannot be disclosed to a requester as it may have far reaching consequences in terms of confidentiality of the information received by the police and may even endanger the physical safety of those examined by the police authorities. In a case where some information was already given to the appellant, the Commission observed that some more information without unduly compromising the investigation or the witnesses, etc. can be given to him. The Commission felt while still recognizing that in all requests for information under the RTI Act, especially when they pertain to the law enforcement authorities, it becomes necessary to strike a fine balance between the imperatives of the confidentiality of the sources of information, witness protection and so on, with the right of the citizen to get information. The Commission, therefore, directed the first Appellate Authority and the PIO that balance will not be unduly affected if the following information is furnished to the appellant: -

1. The dates on which the Investigating Officer actually investigated the case;
2. Dates on which actions, such as, searches etc. connected with the investigation; were taken;

3. A gist of the depositions of those examined by the police without disclosing names or details which could compromise witness/source confidentiality and safety.

14. From the above discussion, it will follow that since Appellant is the Complainant he should know about the progress of the Complaint. Ground V mentions that inspection is required to take further legal steps as per section 156(3) of Cr.P.C.

15. In view of all the above, I am of the opinion that the request of the Appellant is to be partly allowed. The Appellant must be allowed to inspect the file/files pertaining to the investigation in CR No. 417/03 registered at Margao Town Police Station. The Appellant be allowed to see the investigation carried, however, findings of the investigation should not be shown at this stage. In case the Investigation Officer feels the names of witnesses may not be disclosed as above. Regarding case diary the same be shown only to the extent of progress of the case and no other details are permitted to be shown.

Needless to add that no photocopies or photos are allowed to be taken at this stage. So also this Commission has not allowed to take any copies of documents etc. at this stage only inspection in terms of above are allowed.

16. Prayer 4 is for disciplinary action. The invocation of section 8(1)(h) and (g) are within law and the same cannot be termed as malafide. Law provides for the same.

The only thing the P.I.O./F.A.A. should justify the same satisfactorily with reasons.

Regarding penalty requests are in time. Even First Appeal is disposed in time.

17. Before I conclude I must say that C.R. is of the year 2003. From records it is seen that investigation is not yet completed. One cannot wait for long more so it is a criminal case. Considering the fact that matter is pending for long this Commission hopes that in the interest of fair play and equity the Investigating Officer should see that the same is completed.

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

ORDER

The Appeal is partly allowed and Appellant is granted permission for inspection of file/files pertaining to the investigation in C.R. No. 417/03 dated 18/12/2003 registered at Margao Town Police Station filed by Appellant as observed in para 15 above, under proper supervision.

The inspection to be given within 8 days from the date of written request from the Appellant.

The Order of F.A.A. is set aside.

The Appeal is disposed off accordingly.

Pronounced in the Commission on this 21st day of April, 2010.

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

