

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri Afonso Araujo, State Information Commissioner

Appeal No. 67/2009

Shri Natividade Fernandes,
H. No. 137, Anuz,
Nuvem,
Salcete – Goa

... Appellant.

V/s.

1) The Public Information Officer,
Superintendent of Police (South),
Margao – Goa

... Respondent No. 1.

2) The First Appellate Authority,
Inspector General of Police, PHQ,
Panaji – Goa

... Respondent No. 2.

Appellant alongwith his representative Shri Joao Pereira.
Smt. N. Narvekar for Respondent No. 1.

J U D G M E N T

(Per Afonso Araujo)

The decision of the Public Information Officer denying the information sought under the RTI Act and the Order of the First Appellate Authority upholding the said decision is being challenged in this Second Appeal.

2. By request dated 15.11.2008 the Appellant sought information under the RTI Act and requires certified copy of the letters addressed to the Director of Prosecution by the Investigation Officer seeking legal opinion on the Cr. No. 241/07 registered at Verna Police Station on the complaint by the Appellant and also the legal opinion given by the Director of Prosecution. By communication dated 06.12.2008, the Respondent No. 1 rejected the request of the Appellant u/s. 8(1) (h) of the RTI Act on the strength that the information sought is part of the investigation and if it is disclosed it will impede the process of investigation. Not satisfied with the decision of the Respondent No. 1, the Appellant preferred the First Appeal and by Order dated 08.01.2009 the First Appellate Authority upheld the decision of the Respondent No. 1 and dismissed the Appeal. Hence this Second Appeal.

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3. The information sought by the Appellant consists of certified copies of letters to Director of Prosecution from Investigation Officer and legal opinion given by the Director of Prosecution in respect of Cr. No. 241/07, Verna Police Station. It appears that the Appellant is the Complainant upon which the Cr. No. 241/07 was registered and the Investigation Officer sought legal opinion from the Director of Prosecution. Once the Police Authority seek opinion from the Prosecution Authority, a fiduciary relationship arises between the Director of Prosecution and the Police Authority seeking the opinion and the Director of Prosecution is justified in denying this information on the basis of a fiduciary relationship. In case the information regarding this opinion is sought directly from the Police Authority, and the file is pending before the Director of Prosecution, then the Police authority cannot transfer to the Director of Prosecution this request for information but await the receipt of the opinion from the Director of Prosecution and then decide whether the information to be provided or rejected under the RTI Act.

4. The Respondent No. 1 denied the information sought on the strength that the Cr No. 241/07 is under investigation and disclosure of the opinion of the Director of Prosecution could impede the process of investigation. No doubt that the Appellant being the Complainant is entitled for the documents pertaining to Cr. No. 241/07 of Verna Police Station and if the information regarding opinion is sought directly from the Director of Prosecution it should be denied as a fiduciary relationship exist between the police authorities investigating the case and the Director of Prosecution. The Public Information Officer by taking into consideration all the aspects envisaged in regard to exemption from disclosure under RTI Act and also on the aspect whether opinion of Director of Prosecution falls within the definition of information under the RTI Act, has to decide the request of the information seeker. In such circumstances, it would be proper to remand the matter to the Respondent No. 1 to decide afresh the request of the Appellant dated 15.11.2008 u/s. 7(1) of the RTI Act.

Hence the following order:

...3/-

ORDER

The Appeal is allowed. The Order of the First Appellate Authority dated 08.01.2009 upholding the decision of Respondent No. 1 is set aside. The Respondent No. 1 to decide the application of the Appellant dated 15.11.2008 in accordance with the provisions of the RTI Act and inform the Appellant about the decision.

Pronounced on this 27th day of April, 2010.

Sd/-
(Afonso Araujo)
State Information Commissioner

GSIC/Appeal No. 67/2009
Goa State Information Commission
Shrama Shakti Bhavan, Gr. Floor,
Patto Plaza, Panaji-Goa

29.04.2010

To,

- 1) Shri Natividade Fernandes,
H. No. 137, Anuz,
Nuvem,
Salcete – Goa
- 2) The Public Information Officer,
Superintendent of Police (South),
Margao – Goa
- 3) The First Appellate Authority,
Inspector General of Police, PHQ,
Panaji – Goa

Sub: Appeal No. 67/2009.

Sir,

I am directed to forward herewith copy of the Judgment dated 27th April, 2010 passed by the Commission in the above referred Appeal for information and necessary action at your end.

Yours faithfully,

(Meena H. Naik Goltekar)
Under Secretary-cum-Registrar

Encl: As above.