

GOA STATE INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Appeal No. 17/2006/POLICE

Mr. Kapil Lav Sheth
G-2, Ground Floor,
Navdeep Apartments,
Vidyanagar, Lave 1,
Aquem, Margao, Goa.

..... Appellant.

V/s.

1. Public Information Officer
Superintendent of Police,
CID, Panaji - Goa.
2. First Appellate Authority
DIG - II c/o Director General of Police,
HQ, Panaji.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per G. G. Kambli)

Under Section 19 (3) of the RTI Act, 2005 (Central Act 22 of 2005)

Dated: 05/10/2006.

ORDER

This is second appeal filed by the Appellant against the letter No.PHQ/PET-CELL/MAR-28/06/956/2006 dated 11/7/2006 of the Respondent No. 2 (hereinafter referred to as the "impugned letter", under sub-section (3) of Section 19 of the Right to Information Act, 2005 (hereinafter referred to as the RTI ACT).

2. The facts of the case, in brief, are that the Appellant vide his application dated 19/4/2006 approached the Dy. Superintendent of Police, Foreigners Registration Office seeking information on 5 points under the RTI Act. The Dy. Superintendent of Police vide his letter dated 10/5/2006 denied disclosures of the information to the Appellant under Section 8 (j) of the Act. The Dy. Superintendent of Police also informed the Appellant that in case Appellant is not satisfied, the Appellant may approach the Superintendent of Police and thereafter to the Dy. Inspector General of Police.

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3. Accordingly, the Appellant by his application dated 15/5/2006 approached the Superintendent of Police, Foreigners Registration Office seeking the said information. The latter by reply dated 7/6/2006 again denied the information to the Appellant under the said Section 8 (j) of the RTI Act.

4. Feeling aggrieved by the letter dated 7/6/2006 of the Respondent No. 1, the Appellant approached the Respondent No. 2 by his letter dated 14/6/2006 requesting the said information. The Respondent No. 2 maintained the reply given by the Respondent No. 1 vide impugned letter dated 11/7/2006. It is against this impugned letter, the present second appeal has been filed by the Appellant.

5. The notices were issued to both the Respondents. Smt. Rina Torcato, Dy. S.P. and FRO, Panaji was authorized to represent both the Respondents before this Commission. The Respondent No. 1 filed the reply on 25/9/2006, a copy of which was given to the Appellant.

6. On the day of the hearing, the authorized representative of both the Respondents submitted that the Respondents have nothing more to add besides the reply. The Appellant argued the matter in person. As per the second appeal filed before this Commission, the Appellant had sought the following information: -

- a) Whether any action was taken by the Foreigners Registration Office against Mrs. Ana Maria C. Toscana for having overstayed in India from 1993 to 1996 without holding any passport of any Nationality?
- b) Whether the Foreigners Registration Office confirmed that the Mozambique passports acquired by Mrs. Ana Maria C. Toscana were genuine, as there is no bearer's signature as required on her Mozambique passport bearing no. U056473 and on her Mozambique passport bearing no. AB 008419 her status of marriage is Single while she was married in 1999?
- c) Whether any enquiry has been made by the Foreigners Registration Office into the fact that Ana Maria C. Toscana has different dates of birth on her passports and whether the Foreigners Registration Office is aware of the exact date of birth, and if so, what is the exact date of birth?

- d) What is the residential/contact address in India of Mrs. Ana Maria C. Toscana?
- e) Whether the said authorities have taken any action against the said person Mrs. Ana Maria C. Toscana after having brought to light the above said facts?

7. The Respondent No. 1 in the reply stated that the information sought by the Appellant have already been provided to the Appellant except the information pertaining to the point (d).

8. The Appellant submitted that the information furnished by the Respondent No. 1 is incomplete and not correct. The Appellant insisted that the Respondents ought to have taken action against Mrs. Ana Maria Clarice Toscana for overstaying in Goa beyond the permitted period, as she is a Foreign National. He also submitted that Mrs. Ana Maria Clarice Toscana has given two different dates of birth in two different passports and she has also recorded her status as single in the Mozambique passport although she was married in the year 1999. The Appellant further submitted that Mrs. Ana Maria Clarice Toscana is a Appellant's wife and the Appellant is entitled to know her detailed address. He also drew our attention to the letter written by Sub-Divisional Police Officer, Margao wherein the latter informed the Appellant that Mrs. Ana Maria Clarice Toscana was not found at Litsons Plaza, Ground Floor, Nuvem, Salcete.

9. So far as the contention of the Appellant is concerned that Mrs. Ana Maria Clarice Toscana has overstayed in India without the valid permission, the Respondents have informed that the Government of Goa has granted extension of stay to Mrs. Ana Maria Clarice Toscana from time to time and therefore, the question of taking any action against her for overstaying does not arise. As far as other allegations that there are two dates of birth, the Respondent No. 1 in reply have maintained that the two different dates of birth are mentioned in the passports as 20/12/1968 and 24/12/1968 and therefore, the Portuguese Consulate in Goa has been requested to clarify the position. The Commission's role under the RTI Act is limited to ensure that the information sought by the citizen is provided unless it falls in the exempted categories. The Commission cannot direct any authority to take any action against any person for any wrong being. The person may seek the appropriate remedy before the competent authority.

10. In the present case, it is seen that the Appellant first approached the Dy. Superintendent of Police, FRO under the RTI Act for seeking information who by his letter dated 10/5/2006 denied the information to the Appellant. While doing so, he has also informed the Appellant that the Appellant if not satisfied, may approach the Superintendent of Police and DIG. The action on the part of Dy. S.P. in deciding application of the Appellant was not proper as the Dy. S.P. is not the Public Information Officer and therefore, the letter dated 10/5/06 of the Dy. S.P. is non-est being without jurisdiction. We have already held this view in a number of cases pertaining to the Police Department.

11. It is also pertinent to note that the Respondent No. 1 has furnished the information to the Appellant on 4 points out of 5 points after filing the second appeal before this Commission but before the second appeal is decided. If the information could be given after filing the second appeal, the same could have been given at the beginning before rejecting the request of the Appellant. It is also not understood as to how the first Respondents has provided the information on 4 points to the Appellant when the first Appellate Authority has upheld the decision of the Respondent No. 1 and no orders are passed by this Commission. By providing the information after the decision of the first Appellate Authority by the Respondent No. 1, it amounts to disrespect or defiance of the order on the first Appellate Authority. The PIO is bound to obey the orders of the fist Appellate Authority. However, in the present case, the PIO has provided the information after the first Appellate Authority has denied the same. This is certainly not a healthy practice. Further, adverse influence can also be drawn that the Respondents have deliberately and intentionally denied the information to the Appellant.

12. The case of the Respondent is that the information sought by the Appellant pertains to Mrs. Ana Maria Clarice Toscana who has requested the Respondent not to disclose the said information to the Appellant as she has alleged that the Appellant has been harassing, threatening and assaulting her for which purposes he has also filed the Police complaint against the Appellant. The Respondents also stated that Mrs. Ana Maria Clarice Toscana has also informed the Respondents that the Appellant has threatened her as she is fighting a Court case for custody of minor daughter.

13. Admittedly, the information sought by the Appellant pertains to Mrs. Ana Maria Clarice Toscana who is a third party. The procedure for providing the information pertaining to the third party is laid down in Section 11 of the RTI Act. Before disclosing any information pertaining to the third party, the PIO has to give a notice thereof to such third party to make submission in writing or orally whether such information should be disclosed or not and such submission should be kept in view while taking a decision about disclosure of information. In the instance case, the Respondents have stated that the third party has objected for the disclosure of the information on point no. (d). However, under sub-section (4) of Section 11 of the RTI Act right is conferred upon the third party to prefer an appeal against the decision of PIO. Further, in terms of sub-section (4) of Section 19 of the RTI Act, where the second appeal has been preferred, the Commission has to give a reasonable opportunity of being heard to the third party if such information relates to third party. We have noticed that no such opportunity has been given to the third party inasmuch as the information sought by the Appellant pertains to the third party.

14. Therefore, in order to enable the Commission to take an appropriate decision in the present appeal, it is necessary to give a notice of the appeal filed by the Appellant to make the submission in writing or orally on the said appeal.

15. We, therefore, direct that the notice be issued to Mrs. Ana Maria Clarice Toscana through the Respondent No. 1 to make the submission in writing or orally within 10 days from the date of the receipt of this order. A copy of the memo of appeal alongwith its enclosures be also sent to Mrs. Ana Maria Clarice Toscana alongwith this order.

Pronounced in the open Court on this 5th October, 2006 at 11.00 a.m.

(G. G. Kambli)
State Information Commissioner, GOA.

(A. Venkataratnam)
State Chief Information Commissioner, GOA.

