

GOA STATE INFORMATION COMMISSION

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

Appeal No. 18/2006/POLICE

Mr. Joao C. Pereira
H. No. 40, Acsona, Utorda,
Salcete - Goa.

..... Appellant.

V/s.

1. Public Information Officer
Superintendent of Police (South Goa),
Margao, Salcete - Goa.
2. First Appellate Authority
The Deputy Inspector General of Police (II),
Police Head Quarters,
Panaji - Goa.

..... Respondents.

Appeal No. 19/2006/POLICE

Mr. Joao C. Pereira
H. No. 40, Acsona, Utorda,
Salcete - Goa.

..... Appellant.

V/s.

1. Public Information Officer
Superintendent of Police (South Goa),
Margao, Salcete - Goa.
2. First Appellate Authority
The Deputy Inspector General of Police (II),
Police Head Quarters,
Panaji - Goa.

..... Respondents.

CORAM:

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

(Per A. Venkataratnam)

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

Dated: 11/10/2006.

Adv. Vivek Vaz for Appellant and Adv. Irshad Agha for the Respondents
in both the cases.

ORDER

Both the appeals are taken together for a common order as not only Appellant and Respondents, Advocates representing them, the subject matter of request for information are all same. The brief history of these cases is that the

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Appellant was arrested by Verna Police and was subsequently bailed out. It appears that a criminal case was registered against him and his father on a complaint by one Mr. Sujit Borkar. The Appellant initially approached the Public Information Officer (Respondent No. 1) by two requests dated 1/4/2006 and 10/4/2006. The first application contains a request for information on 12 points and the second one on 8 points. The documents were requested to be given to the Appellant. However, the PIO rejected both the requests on 28/4/2006 and 8/5/2006 respectively, both under Section 8(h) of the Right to Information Act. Thereafter, the Appellant filed the first appeals before the Respondent No. 2 in both the cases, which were rejected on 26/05/2006 and 6/6/2006 respectively. The grounds for rejection of appeals are also the same, namely claiming the exemption provided from disclosure under Section 8(h) of the Act. Though, both the authorities have rejected the requests and mentioned the reasons for rejection, they have not clearly mentioned as to how the requests are covered under the exemption clause except simply mentioning the Section numbers 8 (h) of the Act. Incidentally, both the respondents were not careful enough even to quote the correct section, as there is no Section 8 (h) of RTI Act. They meant, perhaps, Section 8 (1)(h) of the Act.

2. In both cases, the Respondents filed the written replies through a Police Inspector with due authorization. They did not deem it fit neither to appear before us nor even to sign the written replies. Finally, the cases were argued by learned Adv. Agha on their behalf, a copies were given to the Appellant.

3. Arguing for the Appellant, the learned Advocate, submitted that the information requested is not covered under the exemption clause as the request was made almost six months after the registration of FIR and that the information requested was in respect of his own client cases. In the memo of appeal, it was mentioned that the application requesting the information is not related to the criminal case No. 74/2005 and section 8(h) of the RTI Act is not attracted because of the offence was registered on 5/9/2005 whereas the application for information is dated 10/4/2006. His other arguments are that the Appellate Authority has not given his client a personal hearing and merely confirmed the PIO's order without applying his mind. He prayed for the imposition of penalty of Rs.250/- for each day from 8/5/2006 till the information is provided in one case; from 28/4/2006 till the information is provided in the

other case and to hand over to the Appellant the entire amount. He had also requested for initiating disciplinary action against both the Respondents for malafidely denying/obstructing information sought for.

4. The learned Adv. Agha arguing for the Respondents while relying on the written reply of the Respondents, maintained that the investigation in respect of the criminal case No. 74/2005 against the Appellant, was not complete at the time of the requests for the information. Now, it is completed and the chargesheet is filed but not yet registered in the Court registry. He also submitted orally at the time of the arguments that the refusal of the information is also covered under Section 8(g) of the Act and Section 125 of Indian Evidence Act. The learned Adv. Vaz took objection for raising the fresh grounds of refusal only at the time of arguments.

5. We have perused the applications for requests of information, the written replies and considered the arguments advanced by both the Advocates. The first request consists of supply of information/documents on 12 points. Among these are the statements of the witnesses, the names of witnesses and the copy of particular page of station diary of Verna Police Station. There are other requests regarding furnishing the arrest cards panchanama and FIR lodged against the Appellant. Similarly, in the second request dated 10/4/2006, 8 documents were requested to be provided out of which one is about a particular page of the station diary. The Respondents have objection for revealing the information and addresses of the witnesses as well as particulars of the station diary on the ground that there may be tampering of evidence by the Appellant by pressurizing the witnesses and covering tracks by the Appellant in the matter of the offence registered and under investigation. It is surprising that if this be the case, the Police did not say so in as many words at the time of refusing the requests for the information. Such a plea is taken for the first time before us. The following Sections of the RTI Act and the Indian Evidence Act were relied by the Appellant, which are quoted below verbatim for a better appreciation of the case:-

Section 8 of the RTI Act: -

Exemption from disclosure of information.-

(1) Notwithstanding anything contained in this act, there shall be no obligation to give any citizen,-

- (a) -----
- (b) -----
- (c) -----
- (d) -----
- (e) -----
- (f) -----

(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 purposes;

(h): - "information, which would impede the process of investigation or apprehension or prosecution of offenders;

Section 125: - INFORMATION AS TO COMMISSION OF OFFENCES: -

"No Magistrate or Police Officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue office shall be compelled to say whence he got any information as to the commission of any offence against the Public Revenue."

6. It is very clear from the mere reading of the above Sections that the PIO can refuse information only if he is of the opinion that the disclosure would obstruct the process of investigation or apprehension or prosecution. In these cases, the Appellant was already apprehended though investigation was not completed, it was never the case, of the Respondents that its progress would be impeded. The third stage, namely, of the prosecution did not yet arise. Even, if the PIO or the first Appellate Authority comes to the conclusion that revealing the information would impede the process, it is mandatory for both of them to specifically mention so in as many words as provided under Section 7 (8) of the Act. We are of the opinion that merely mentioning a clause of the exemption like Section 8 (g) or (h) will not meet the requirements of the Section 7 (8) of the Act. That apart, to provide the list of witnesses before the chargesheet is filed is not exempted under Section 8 (1) (g) or (1) (h) because what is to be ascertained by the PIO while refusing the information is the possibility of such a disclosure of information would endanger the life or physical safety of any person. First of all the request was not about the revealing of source of information received by the Police regarding the offence under the investigation, secondly, it was not established that the life of anybody was endangered if their names are revealed

to the Appellant and finally it was not submitted before us and it is definitely not on record that the information leading to the registration of offence against the Appellant was provided in confidence to the Police. Similarly, Section 125 of the Indian Evidence Act is about revealing the information by the Police about the informers to the Police or other investigating agency. As we have seen from the requests for information, it is neither asked for by the Appellant nor stated by the Respondents that the information is about the informers of the confidential information to the Police. Besides, we agree with the learned Adv. Vaz that these grounds are an afterthought to argue before us and to justify the denial of information to the Appellant. Again, all the provisions of all the acts, which are in consistent with the provisions of the RTI Act stand overridden under Section 22 of the Act. We, therefore, find no substance in the arguments advanced on behalf of the Respondents. However, we do agree that the station diary may contain a few confidential entries, which perhaps could not be revealed to the Appellant. Even in such a case, the PIO has to come to the conclusion which is confidential information and which is not and should reveal that information which is not exempted from disclosure under Section 8 of the Act. For this purpose, specific provision exists under Section 10 of Act. But again, the opinion about severability of the exempted information from the other information has to be decided by the PIO and mentioned in a speaking order the reasons for rejecting a part of the information requested.

7. We have now to dispose off the prayer of the Appellant requesting for imposition of penalty at the rate of Rs.250/- per day and pass on the amount to him. The penalty proceedings under Section 20 of Act can be started against the PIO only if he (i) refuses to receive an application or (ii) has not furnish the information in the statutory time limit or has malafidely deny the request or give incorrect or incomplete or misleading information. In the case under discussion, none of these requirements are fulfilled. The information was refused within the statutory time period claiming exemption clause. It is a different matter that the Commission holds another view but the PIO's refusal to give the information is

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not covered within the mischief of the Section 20 (1) of the Act. We are, therefore, not inclined to start the penalty proceedings. There is also no provision to pass on the penalty amount to the Appellant even if such a situation arising imposing a penalty on the PIO.

8. With this discussion, we partly allow both the appeals. The orders of the PIO dated 28/4/2006 in appeal 19/2006 and dated 8/5/2006 in appeal 19/2006 are hereby set aside. Similarly, the orders of first Appellate Authority dated 26/05/2006 and 6/6/2006 are set aside. However, the requests in both the cases in respect of providing the copies of the station diary are rejected. The rest of the information should be provided to the Appellant in 7 days from the date of this order irrespective of whether or not chargesheet is filed/registered against the Appellant.

Pronounced in open Court.

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

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