

GOA STATE INFORMATION COMMISSION

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

Appeal No. 13/2006/POLICE

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

..... Appellant.

V/s.

1. Dy. S. P. (Headquarters), Panaji &
Asst. Public Information Officer.
2. S. P. (Headquarters), Panaji &
The State Public Information Officer.
3. Deputy Inspector General of Police (II),
Panaji & First Appellate Authority.

..... 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 : 05/09/2006.

Adv. Valmiki Menezes with Adv. Rowena D'Souza for the Appellant.

Respondents 1 and 3 ex-parte. Respondent 2 represented by Smt. Ezilda D'Souza .

ORDER

The brief facts are that the Appellant complained against Shri Arvind Gawas, Superintendent of Police (Headquarters) & the Respondent No. 2 herein to the Chief Secretary by his letter dated 29/10/2005, which was forwarded by the Under Secretary (Home Department) on 18/11/2005 to the office of the Director General of Police for enquiry and report. It appears that an enquiry was conducted by the S.P. South Goa which was forwarded to the Government by the S. P. (Headquarters) on behalf of the DGP. The Complainant believes that the Respondent No. 2 has prepared his own report for submission to the Government. Hence, he asked the Public Information Officer of the Police Department i.e. Respondent No. 2 himself, by his letter dated 18/2/2006 to give

...2/-

him a copy of the report forwarded to the Government by the D.G.P. Office and also to inform him the name and designation of the officer who prepared that report. However, he was directed to approach the APIO for this information. When the APIO was approached by another application dated 03/03/06, request was rejected on 25/3/2006 under Section 8(j) of the RTI Act. He has again approached the PIO on 29/3/2006 for the same information, which is the present matter of the complaint. Soon after he made a second attempt on 29/3/2006, he was informed by the PIO by letter dated 5/4/2006 "to come on 7/4/2006 at 16.00 hrs. alongwith the fees for issuing the copy of the enquiry report/details as requested". There is a grey area as to what has happened between this date and 5/5/2006. The Appellant says that he has approached the PIO on at least 3 occasions and the details requested were not given to him. He filed an appeal to the Respondent No. 3 on 5/5/2006. The Respondent No. 3 informed the appellant on 11/05/06 that the "requested copies of the reports were issued" to him. He further stated that the "enquiry was conducted by S.P. South based on whose reports S. P. (Headquarters) submitted reports to the Government authorities". This letter was signed by S.P. (Headquarters) on behalf of the D.I.G. (II), (Respondent 3) who is Appellate Authority under the Right to Information Act. Both the reports i.e. enquiry reports prepared by the S. P. South and what was forwarded by the S. P. (Headquarters) was said to have been issued to the Complainant. It was also mentioned that there is no question of holding any inquiry against the S.P. (Headquarters). The appellant thereafter approached the D.G.P. on 29/05/06 to inform him as to who has prepared the report dated 13/12/05 in response to the letters of the Under Secretary (Home) dated 18/11/05 and 12/12/05. The D.I.G. (II), Respondent 3 herein, once again informed the appellant, this time under his own signature that "it is not obligatory to reveal the details sought by the appellant under Section 8 (j) of RTI Act. No reasons are given how the disclosure of information is exempted under Section 8 (j) of the Act". It is against this letter the present second appeal is filed.

2. On the date fixed for hearing, the learned Adv. Valmiki Menezes arguing on behalf of the appellant stated that he has received only one report and it is not clear as to who had prepared this report. The rejection of information to him by letter dated 29/05/2006 of Respondent 3 (Ex. "H"), that "Under Section 8(j) of the Right to Information Act, 2005 it is not obligatory to reveal the details sought by

you” is contrary to his earlier letter dated 11/5/2006 (exhibit at “D”) stating that S. P. (Headquarters) prepared a report based on the report of S.P. (South).

3. The Respondent No. 1 is the APIO who has no responsibility under the RTI Act except to forward the request of the applications/ appeal to the respective authorities. He was not present on the date of final arguments. The PIO is represented by Mrs. D’Souza by an authority letter. The DIG, the Respondent No. 3 submitted a letter earlier authorizing the Respondent No. 1 to represent him. In effect both Respondent No. 1 and 3 remained absent and the case proceeded ex-parte against them. There is, however, a letter on record by the office of Respondent No. 1 stating that Respondent No. 1 is on leave and cannot attend the hearing. Apart from the fact that such applications for adjournment have to be submitted on the day of the hearing itself, the reason for absence cannot be agreed to. The notice is clear that a person can choose anyone to represent himself. He need not remain present for the hearing. As such the absence of Respondent No. 1, though on leave, is not a ground for adjournment of the matter. Hence, the matter proceeded ex-parte in respect of Respondent 1 and Respondent 3.

4. The representative of Respondent No. 2 who was present for the hearing maintained that the reports are already given to the Complainant. When confronted with the contradictory letter by the Respondent No. 3, she preferred to say that it may be ignored as the information is already given.

5. So right from the beginning the Commission is constrained to observe that the Police Department is either unaware of the procedure under the RTI Act including the powers and responsibilities of the various authorities or is deliberately misleading the citizens. We would like to take a charitable view in favour of the first alternative. To begin with, the APIO is not an authority either to give information or to refuse the information. In spite of this, the PIO has directed the appellant to obtain the information from the APIO. Secondly, in this case, the APIO was pleased to even “reject the request” by his letter dated 25/03/06, though it was not made an issue before us. This is highly irregular. The Commission has received similar complaints against the Police Department building up a hierarchy of APIO/PIO/Appellate Authority in the matters of disposal under RTI Act. This should be set right immediately and instructions

should be passed on to all the APIOs of the Police Department about their exact role and responsibility. A copy of the instructions so issued should be forwarded to the Commission. Secondly, in this case, the Commission has noted that a complaint against one S.P., (in this case, the PIO himself) has been inquired into by another S.P. Not only that; the report against himself was forwarded to the Government by the same person i.e. Respondent No. 2. To say the least, this is against all principles of natural justice and could have been avoided. Though the Commission cannot find fault legally about the inquiry against one officer of the Department being conducted by a colleague of the same rank of the same Department, it could have been forwarded at least by a superior officer like the DIG. The very fact that the same officer against whom the complaint is made has forwarded report against himself to the Government and is now required to give information under RTI Act as P.I.O. shows that he has access to the findings of the report conducted behind the back of the appellant. This has naturally given rise to the suspicion in the minds of the appellant that the report might have been tampered with. Any reasonable person would think on the same lines. It not enough to do justice. It should appear to have been done in a free and fair manner. Ceaser's wife should be above board. The suspicion is further confirmed by refusing to give the report submitted by the Respondent No. 2 to the Government. Finally, taking the contrary stand before the Commission that reports have been issued and also withheld under Section 8 (j) of the Act does not throw any light in the matter.

6. On going through the various exhibits, hearing the arguments, we are setting aside the letter dated 29/05/06 of the Respondent 3 and issue the following directions: -

- (i) The Public Authority, i.e. Director General of Police is hereby directed to issue and circulate instructions about the exact role and responsibility of APIOs under the RTI Act within one week from the date of this order and compliance reported to the Commission;
- (ii) We direct the PIO to issue the copy of the report submitted by him to the Government within one week from the date of the order specifically mentioning whether he has personally prepared the report or only forwarded the report of the S. P. South Goa. If there are two reports, he

should give both the reports. If there is only one report, he should specifically say so and give the same to the appellant.

(iii) The Respondent No. 3 i.e. Appellate Authority should pass speaking orders on the appeals before him after hearing the appellants and whenever give full reasons why they are rejected and when they are allowed in what manner the order of the PIO is defective.

7. All the parties should be informed. A copy should be sent to the D.G.P. also for compliance.

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

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