

## **GOA INFORMATION COMMISSION**

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

Appeal No. 10/2008

Shri. Manohar Parrikar,  
Hon'ble Leader of the Opposition,  
Goa State Assembly Complex,  
Porvorim, Bardez – Goa.

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Appellant.

V/s.

1. Public Information Officer,  
Dr. N. Radhakrishnan,  
Joint Secretary to Governor,  
Raj Bhavan, Dona Paula – Goa.
2. The first Appellate Authority,  
The Secretary to Governor,  
Raj Bhavan, Dona Paula – Goa.

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Respondents.

### **CORAM:**

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

(Per A. Venkataratnam)

Dated: 30/07/2008.

Adv. Dattaprasad Lawande for the Appellant.

Adv. Carlos Ferreira for the both the Respondents.

Cases referred: -

- 1) Rameshwar Prasad and others Vs. Union of India 2006 (2) S.C.C.1;
- 2) PUCL Vs. Union of India and another 2003 (4) S.C.C. 399;
- 3) National Textiles Corporation Vs. Sitaram Mills AIR 1986 S.C. 1234;
- 4) M/s. New India Sugar Mills Vs. Commissioner of Sales Tax, Bihar, AIR 1963 S.C. 1207.

## **ORDER**

This disposes off a second appeal filed by the Appellant against the order dated 7/01/2008 of the Respondent No. 2 herein, the first Appellate Authority under the Right to Information Act, 2005 (RTI Act for short), hereinafter called the impugned order. Notices were issued to the Respondents and learned Adv. Carlos Ferreira filed a written statement. The matter was subsequently taken up for arguments.

2. The Appellant, initially by his application dated 21/09/2007, requested the Public Information Officer, the Respondent No. 1 herein, to give him "copies of the reports sent by Governor to Union Home Minister, New Delhi on political

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situation in Goa during the period from 24<sup>th</sup> July, 2007 to 14<sup>th</sup> August, 2007.” The Public Information Officer by his letter dated 22<sup>nd</sup> October, 2007, rejected the request on the ground that the reports are “highly sensitive and secret” and therefore, exempt from the disclosure under the RTI Act. The exact provisions of the RTI Act barring such disclosure are not mentioned by him. Subsequently, the Appellant moved his first appeal on 8<sup>th</sup> November, 2007 before Respondent No. 2 who, by his impugned order, upheld the decision of the Public Information Officer and rejected the appeal. While doing so, he has added two more grounds for refusal of information namely, that the information would result in breach of privilege of the Legislature under section 8(1)(c) of the RTI Act and that the disclosure of information will result in the breach of fiduciary relationship between the Governor and the Union Government. The Appellant in his second appeal now contends (i) that the first Appellate Authority cannot add his own grounds while deciding first appeal under section 19(1) of the RTI Act as he has to only examine the grounds of refusal by the Public Information Officer and give a decision whether these grounds could be upheld or rejected; (ii) that the disclosure of the information requested neither breaches the privilege of the Legislature of Goa nor violates the fiduciary relationship of the Governor with the Union Government.

3. While submitting the written reply, the learned Advocate for the Respondents raised a preliminary objection of maintainability stating that Governor of a State is “not subject nor amenable to the provisions of the RTI Act in view of the Constitutional provisions inasmuch as the Governor is not an authority or body or institution of self-Government”. However, while arguing the matter, the learned Advocate did not press this point and hence, the learned Adv. Lawande did not join issue with him. We, therefore, proceed further with this matter on merits.

4. On the point of fiduciary relationship of the Governor with the President of India and the Union Home Minister, the learned Adv. Lawande took us through the provision of section 8(1)(e) of the RTI Act to state that the section does not leave any ambiguity for giving any liberal interpretation or interpolation by the learned first Appellate Authority as is mentioned in the impugned order. His view is that the fiduciary relationship has to be viewed in the context of the information available to the person from his own sources while giving information to the citizen. The reference to the word “person” is to the Governor

in this case and the fiduciary relationship is between him and the sources who have given him the information. In other words, the relationship is between the various authorities who have given inputs in the reports sent by the Governor to the Union Home Minister and not between Governor and the Union of India as contended in the impugned order. Joining issue, the learned Adv. Carlos Ferreira submitted that the fiduciary relationship in the clause (e) of section 8(1) of the RTI Act should be read as to include both towards the citizen and towards the authorities to whom the reports are submitted by the Governor.

5. The learned Adv. Lawande has cited three cases in support of his case that his request forms an integral part of Article 19(1)(a) of the Constitution of India which is a fundamental right of freedom of speech and expression and that a statute has to be interpreted in accordance with its objectives. In its preamble, the RTI Act seeks to provide to a citizen access to the information available with the public authority and the State Information Commission and well as Central Information Commission have been entrusted with the powers and responsibility of ensuring that such access is provided to the citizens. He has particularly cited the case of PUCL Vs. Union of India and another. There are a number of cases apart from PUCL case confirming that the right to access information is a fundamental right under Article 19(1)(a) of the Constitution. There is no doubt about this and law is well settled. The learned Adv. Ferreira did not join issue on this point. There is, therefore, no doubt that what the Appellant requested from the Respondent No. 1 is part of his fundamental right of freedom of speech and expression. By the RTI Act, a right is conferred on the citizen under section 3 of the Act to seek for and an obligation is cast on the public authority under section 4 thereof to disclose the information available on the records of the public authority. The words "information", "record", "public authority" are all well defined in the RTI Act and there is no dispute about these definitions before us. In other words, the Governor's office is a "public authority", the reports sought by the Appellant are "information" and form the "records" of the public authority. Therefore, when a request is made for their disclosure, an obligation is cast on Respondent No. 1, Public Information Officer to give the information unless the request is covered by one or more of the exceptions provided under section 8 or section 9 of the RTI Act.

6. Thus, only point that requires to be seen by us is whether the request falls within the four corners of the two sub-sections (c) and (e) of section 8(1) cited

by the Respondent No. 2 in the impugned order for rejecting the disclosure of information. For the same reason, the case of Rameshwar Prasad Vs. Union of India and another cited by learned Adv. Lawande is also not relevant before us. In that case, it is laid down by the Supreme Court that a Governor's report are subject to judicial review by a court of law to examine whether it is based on "relevant material, bonafide and whether the facts have been duly verified". Here, neither this Commission is a court competent to hold such judicial review nor the Appellant has requested for such a judicial review. His request is to get copies of the reports sent by the Governor to the Union Home Minister between a certain period of time. The existence of such reports is not disputed by the Respondents. Only, they have not been given to the Appellant for the reasons mentioned in the impugned order.

7. While passing the impugned order and upholding the Public Information Officer's rejection of information, the Respondent No. 1 has mentioned that "constructive and liberal interpolation and interpretation of the exemptions under section 8 of RTI Act 2005, reveals that the reports of H. E. the Governor of the State to the President of India and Union Home Minister are also circumscribed within the overall idea, relevance and spirit of the specific exemption granted under section 8(e) of the RTI Act, 2005 and as such is not liable to be provided to the Appellant." It is this interpretation of the section 8(1)(e) that is being objected to by Shri. Lawande, learned Advocate for the Appellant, because according to him, there is no need of any constructive and liberal interpolation and interpretation of this provision of the Act. Even if there is liberal interpretation, it should be in favour of the Appellant and not in favour of the Public Information Officer i.e. Respondent No. 1. He has cited two cases to support his argument, namely, the NTC case and New India Sugar Mills referred supra. In the NTC case, it is observed by the Hon'ble Supreme Court of India, that while interpreting the statute the construction (of a legal provision) which would subserve the object of the Act should be adopted and in the New India Sugar Mills, the Apex Court observed that the while interpreting the statute the provisions have to be harmoniously interpreted with the objects of the statute.

8. We have already mentioned above that the objects as mentioned in the long title of the Act is to provide the information to the citizens. To that effect a frame work has been created under the Act and various officers are appointed to carry out the objective of the Act. The access to information itself is to ensure

transparency and accountability and to contain corruption in every public authority. The Central Information Commission and State Information Commissions have been constituted to ensure that these objectives are met. Thus, there is no hesitation in saying that the disclosure of information from the records of the public authority is the RULE. Withholding of information is an EXCEPTION. In fact, the exceptions provided under section 8 are notwithstanding anything contained in the RTI Act to the contrary. This means that the provisions of section 8 extinguish the obligation of the public authority created earlier under section 4 of the RTI Act. Therefore, unless the Public Information Officer makes out a case for bringing the request of the Appellant within the mischief of the provision of section 8, his obligation to disclose the information will not be extinguished.

9. As we have observed above, there is no scope of any interpretation at all of these provisions, much less for a liberal interpretation of section 8(1)(e) because there are no contradictory provisions requiring such an interpretation. Though the exceptions enacted under sections 8 and 9 of the RTI Act are not in consonance of the general objective of the Act to ensure transparency, they are of the nature of reasonable restrictions enacted under Article 19(2) to 19(6) of the Constitution. It is already well settled that the courts have to give interpretation to the provisions of a legislation in a simple and direct manner which is understood in the normal sense of the terms. The difference of opinion appears to be as to what it is meant by the information available to a "person" and to whom the "fiduciary relationship" is to be related while denying the information to the citizen. As far as we are concerned, it is very clear that the person mentioned in the sub-clause 8(1)(e) is the "person" from whom the citizen is seeking information namely, the Governor and the fiduciary relationship refers to the Governor and his informants who have contributed to his reports sent by him to the Union Home Minister which is being asked for by the Appellant. Further, even if the Public Information Officer comes to such a conclusion that the information falls squarely under the mischief of section 8(1)(e), he cannot straight away reject it. What he has to do is to weigh the larger "public interest" as against the "harm it might cause" while disclosing the information and record his decision one way or the other. It is not enough to make a bland statement that there is a fiduciary relationship between the Governor and Union Government to deny this information. We, therefore, do not find any merit in the argument put forth by the Respondent No. 2. We are also

not in agreement with the learned Adv. C. Ferreira to interpret the fiduciary relationship as between the Governor and the President of India or the Union Home Minister because a simple reading of the clause says that the relationship should be between the Governor and the authorities who have furnished the information to the Governor. Therefore, on both the grounds the argument for rejection of disclosure of information is rejected. We have also noted that the larger public interest has not been examined by either the Public Information Officer or by the first Appellate Authority.

10. The next ground for rejection by the Respondent No. 2 is the likely cause of breach of privilege of State Legislature of Goa under section 8(1)(c) of the RTI Act. Here again, except for a bland statement that the disclosure of the information will cause breach of privilege it was not explained as to how it would breach the privilege of Goa Legislature. While the learned Adv. Ferreira has not argued on this point at all, the learned Adv. Lawande emphasized that in order to attract the provisions regarding the breach of privilege of the Legislature, we have to examine the chapter of the Constitution of India, "Powers, Privilege, Amenities of State Legislature and their members" in Article 194 of the Constitution of India. While taking us through this article, he has submitted that under Clause 1, the freedom of the speech of the members of the Legislature within the Legislative Assembly of the State is ensured. The report which is requested is not about the speeches made by the members in the Goa Assembly. Therefore, Clause 1 is not attracted. Clause 2 emphasizes the fact that the freedom conferred on the legislators under Clause 1 is intended to be absolute and unfettered. Similarly, freedom is given in respect of the votes, the Hon'ble Members may give in the Legislature or in a Legislative Committee. The Appellant has neither asked for nor was denied such information. Clause 3 empowers the State Legislature to codify the powers, privileges and immunities and until such codification is done, it is governed by the privileges, powers and amenities enjoyed by the members and committees at the commencement of the Constitution. Similarly, Clause 4 extends the privileges mentioned in Clauses (1), (2) and (3) of Article 194 to all those persons who are not members of the House but who have a right to speak and otherwise take part in the proceedings of the Legislature. In short, the case of Adv. Lawande, is that the Appellant's request of Governor's reports sent to the Union Home Minister is not about the privileges of the Goa Legislature or of the Speaker as mentioned in Article 194 of Constitution of India and therefore, disclosure of the reports will not result in a

breach of Goa Legislature.

11. While no arguments were advanced on this point by the learned Adv. Ferreira, it is necessary to go through the operative portion of the impugned order on this point of breach of privilege of the State Legislature. Firstly, the impugned order says that the reports asked for are based on the reports sent by the Hon'ble Speaker of the Legislative Assembly of Goa, which is not in public domain. It further goes on to add "it is amply clear that the disclosure of the information sought by the Appellant herein, would substantially tantamount to breach of privilege of the State Legislature with regards to its reports on the proceedings of the House, and as such, it is expressly exempted from any exclusion under RTI Act". First of all, we do not know whether the reports of the Governor are based on the report of Hon'ble Speaker of the Goa Legislative Assembly. Presuming that they contain such a report, as argued by learned Advocate, we are not able to fix it up under any specific provision of the breach of privilege in the Constitution of India as discussed above and finally, we are not sure whatever happens in the Legislature of Goa is not in the public domain. On the other hand, most of the proceedings of the House as well as the reports and discussion of the Committees of Legislature are published documents. We, therefore, are not able to agree to this contention of the Respondent No. 2. Even otherwise, if according to him there is any provision which might be construed as a breach of privilege of Goa Legislative Assembly, he can exclude that portion from the report under the "Severability clause" of section 10 of the RTI Act and mention the reasons for withholding this information in a reasoned order.

12. We, therefore, come to a conclusion based on the above discussion that the information requested by the Appellant is not covered under the exclusion of clause (c) and (e) of sub-section (1) of section 8 of the RTI Act. Consequently, the impugned order is set aside. For the same reason, the letter dated 22<sup>nd</sup> October, 2007 of the Public Information Officer is also set aside. The grounds mentioned by the Public Information Officer are not listed at sections 8 and 9 of the RTI Act. Though an attempt was made by the Adv. Ferreira to bring them under section 8(1)(e), we do not see any connection with that sub-section. The reports requested by the Appellant should be given to the Appellant within next 10 days from the date of this order, after severing the reports of the Speaker of the Legislative Assembly of Goa under section 10 of the RTI Act.

13. We are, however, not inclined to start penalty proceedings against the Respondents as we have found that there is no malafide intention in withholding the information requested. Accordingly, the appeal is allowed partially.

Pronounced in the open court, on this 30<sup>th</sup> day of July, 2008.

Sd/-  
(A. Venkataratnam)  
State Chief Information Commissioner

Sd/-  
(G. G. Kambli)  
State Information Commissioner