

GOA INFORMATION COMMISSION

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

Appeal No. 34/2007-08/Police

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

..... Appellant.

V/s.

1. Public Information Officer,
The Superintendent of Police (South),
Town Police Station,
Margao - Goa.
2. First Appellate Authority,
Dy. Inspector General of Police,
Police Headquarters,
Panaji - Goa.

..... Respondents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 14/11/2007.

Appellant present in person.

Shri Nolasco Raposo, authorized representative for both the Respondents present.

ORDER

The Appellant has requested for information on four points to the Public Information Officer on 14/3/2007. The Public Information Officer refused the information under section 8(1)(h) of the Right to Information Act, 2005 (for short the RTI Act) stating that the information relates to criminal case No. 74/05 of Verna Police Station against the Appellant. The case is already filed and is pending before the J.M.F.C., Margao. As such, he said that revealing of the information will impede the prosecution of the Appellant and hence, it is exempted from disclosure under section 8(1)(h) of RTI Act. On appeal before the Respondent No. 2, the first appeal was rejected by order dated 14/5/2007. Hence, the second appeal is filed on 9/7/2007 well within the time limit allowed for filing the second appeal.

...2/-

2. Notices were issued to the parties and the Appellant appeared in person. A Police Inspector by name N. G. Raposo represented both the Respondents. The matter was adjourned 4 times as no reply was filed by the Respondents and all the time a plea was taken that a Government Counsel will be appointed soon. The matter was adjourned on 30th July, 20th August, 3rd September and 3rd October, 2007. On 3rd October, 2007, an application was filed by P.I. Raposo that he is busy with a law and order duty, and that Government Counsel, Shri. K. L. Bhagat is unable to attend the hearing. However, a memo of appearance on behalf of Adv. Bhagat was filed on the same day by some other representative of the Adv. Bhagat. In the same application, a prayer was made for the exemption of the presence of P.I. Raposo and nothing was mentioned about adjournment of the case. The said application is titled as "Say in the Second Appeal No. 34/07-08/377". We take it that this application is the written reply to the second appeal made by the Appellant. There is one sentence in this reply/say stating that the appeal "may please be dismissed". The ground taken is that the information sought by the Appellant is sub-judice before the J.M.F.C., Margao and revealing the information will impede the prosecution of offenders.

3. The information sought is about a legal opinion obtained by the Police Department in Verna criminal case No. 74/2005 before filing the chargesheet in the Court of J.M.F.C. None of the impugned orders of both the Public Information Officer dated 14/3/2007 or the first Appellate Authority's order dated 14/5/2007 clearly mention that such opinion was available on record. However, we presume that a legal opinion is obtained and exists on record because both the Respondents sought to take refuge under section 8(1)(h) of the RTI Act for its exemption. In the reply before us as well as the reasons mentioned in the impugned order, apart from showing that the information would impede the prosecution of the offenders no case is made out how it would impede the prosecution of the offenders or how it is sub-judice before the J.M.F.C. It must be remembered that what is before the Court is the alleged criminal conduct of the Appellant and not the legal opinion sought by the Police Department. We do not know how the "legal opinion" becomes sub-judice or how it will impede the prosecution of the offenders.

4. Section 2(f) of the RTI Act defines information as any material in any form including among others "opinions, and advice". The opinion mentioned herein

is not the opinion of the Public Information Officer but the information available in the records of the public authority. The legal opinion given to a prosecuting agency, is also information as defined above. If this be the case, it becomes a record of the public authority as defined under section 2(i) and the Appellant has a right to the information as mentioned in section 3 read with 2(i) of the RTI Act. As we have observed it is not specifically denied by the Respondents that no legal opinion exists on the record in this case. On the contrary, they claimed exemptions from disclosure under section 8(1)(h) of the RTI Act without explaining how the disclosure of the information would impede the process of prosecution. They have, of course, made bland statement not giving any valid reason. We, therefore, are of the view that the legal opinion tendered to the Police Department in criminal case No. 74/05 of Verna Police Station is not covered under section 8(1)(h) of the RTI Act and has to be provided to the Appellant. Consequently, the second appeal succeeds. The impugned orders of the Public Information Officer dated 26/03/2007 and first Appellate Authority dated 14/5/2007 are hereby quashed and set aside. The information requested should, therefore, be provided by the Respondent No. 1 within 15 days from the date of this order.

5. The Appellant has also asked for initiating disciplinary proceedings against the Public Information Officer. However, we are not inclined to grant this request, as we are satisfied that the information is not deliberately denied. Hence, the appeal is partly allowed.

Pronounced in the open court on this 14th day of November, 2007.

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

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

/sf.