

GOA INFORMATION COMMISSION

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

Appeal No. 36/2008

Mr. Nerlon Albuquerque,
H. No. 215-A,
Church Street, Alto-Porvorim,
Bardez – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
Superintendent of Police (HQ),
Police Head Quarters, Panaji – Goa.
2. First Appellate Authority,
The Inspector General of Police(HQ),
Police Head Quarters, Panaji – Goa.

..... Respondents.

CORAM:

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

(Per A. Venkataratnam)

Dated: 09/07/2008.

Adv. Ashwin Bhohe for the Appellant.

Adv. N. Dias, Government Counsel for both the Respondents.

ORDER

The Appellant has made an application to the Respondent No. 1 posing information on 3 points. The Public Information Officer transferred two requests to another Public Information Officer from whom the Appellant seems to have received the reply. The first request, however, is refused by the Public Information Officer under section 8(1)(g)(h) of the Right to Information Act, 2005 (for short the RTI Act) "as the investigation of Scarlett Eden Keeling, murder case vide Anjuna PS Cr. No. 21/08 under section 302, 201 IPC is still in progress. Furnishing of information at this stage will impede the process of investigation". This reply is dated 5/05/2008. Consequent on the first appeal filed on 12/05/2008 by the Appellant before the Respondent No. 2, an order came to be passed by the Respondent No. 2 on 15/05/2008 within 3 days of filing of the appeal who dismissed it. The reason for dismissing of the appeal and upholding the Public Information Officer's decision is the same as given by the Public Information Officer. In addition, he has added that the preliminary enquiry report (against the Appellant) cannot be furnished "as it contains information pertaining to statements of witnesses, documentary evidence, circumstantial evidence and other evidence collected during the course of investigation of Anjuna P. S. Cr. No. 28/08 u/s 302 IPC. The case now stands transferred to CBI and therefore, State Police has no authority to part with any information pertaining to investigation of this case. Otherwise also u/s 8(1)(h) of

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the RTI Act, 2005, information pertaining to investigation in a criminal case is exempted".

2. Notices were issued and separate replies were filed by both the Respondents. The reply by the Public Information Officer stated that the information requested by the Appellant, if revealed, will impede the process of investigation in the criminal case 21/08. In the reply filed by the first Appellate Authority, an additional fact has also been brought on record that the case has already been "chargesheeted in the Court of Children's Court, Panaji on 31/05/2008 and all the contents of enquiry report are part of case file which is now subjudice". It was mentioned that "the case is being investigated by the CBI now and therefore, will adversely effect on going investigation conducted by the CBI".

3. It is necessary to narrate a little background before we proceed with the matter further. The Appellant was the Investigating Officer initially in the criminal case No.28/08 registered at the Anjuna P.S. Thereafter, a preliminary enquiry was conducted by Shri. Nilu Raut Desai, a Police Officer, against "the lapses" committed by the Appellant in investigating the criminal case No. 28/08 mentioned earlier. Based on this preliminary report, the Appellant was removed from police service. The actual type of removal is not on record i.e. whether it is termination from temporary service or discharge of probation or dismissal from service. The Appellant claimed that his services terminated/or dismissed from Police service. It is also not in dispute removal is the direct consequence of the preliminary enquiry conducted by said Nilu Raut Desai. It is in this context that the Appellant wanted the copy of the preliminary enquiry report. It should be remembered that the Appellant did not ask for the documents and statements etc. recorded during the investigation of the criminal case No. 28/08 but "complete documents and the statements recorded by the Enquiry Officer Shri. Nilu Raut Desai". No doubt the preliminary enquiry might have a connection with the investigation earlier conducted by the Appellant in the criminal case No. 28/08. But it cannot be said that the revealing of the enquiry report of Nilu Raut Desai will impede the investigation of the Police in the criminal case No. 28/08. In any case, the connection is not brought out on record by the Police. Further, we must also remembered that the Appellant was removed from the service based on the report and holding back the report from him will amount to denial of natural justice to him.

4. The Police, at one stage, say that the investigation is complete and the chargesheet was filed in the Children's Court on 31/05/2008, yet in the same breath they claim that the investigation will be impeded if the report is given to the Appellant and that the CBI is further investigating. We do not know how the investigation is still in progress when the chargesheet is filed. In any case, the Appellant is not cited as an accused in the case under trial before Children's Court. We, therefore, cannot even say that the disclosure of information by way of furnishing the preliminary report of Nilu Raut Desai against the Appellant will impede the trial in the Children's Court. We,

therefore, are not inclined to agree with the reasoning given by the first Appellate Authority in the impugned order.

5. For the above reasons, we set aside both the letter dated 05/05/2008 of the Public Information Officer and the impugned order dated 14/05/2008 of the first Appellate Authority. The Public Information Officer is directed to furnish the preliminary enquiry report of Nilu Raut Desai conducted against the Appellant alongwith all the documents and enclosures within 15 days from today.

Pronounced in the open court, on this 9th day of July, 2008.

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

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