

GOA STATE INFORMATION COMMISSION

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

Appeal No. 52/2006/Police

Shri Agostinho Proenca
Aged 52 years,
Bella Vista Colony,
Sangolda, Bardez - Goa.

..... Appellant.

V/s.

1. Public Information Officer
Superintendent of Police (North Goa),
Alto - Porvorim, Bardez - 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)

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

Dated: 25/01/2007.

Adv. Pranay Kamat for Appellant.

Mr. Wilson D'Souza, Police Inspector for both the Respondents.

ORDER

This disposes off the second appeal dated 5/12/2006 against the first Appellate Authority order dated 16/11/2006 and his communication dated 27/11/2006 to the Appellant. Notices were issued and both the Respondents have submitted their written submissions through their authorized representative. The matter was argued by Adv. Pranay Kamat on behalf of the Appellant and Mr. D'Souza relied on the written statements already submitted by both the Respondents.

2. The brief facts are that on 28/9/2006, the Appellant requested the Respondent No. 1 for information on 4 points in case Cr. No. 44/2003 of the Calangute Police Station. The Appellant has requested for information on ; (i) the present status of the subject case; (ii) was the case sent to the Director of

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Prosecution/PP/APP for their opinion; (iii) was the opinion/instructions followed? If yes, what were they? And (iv) Some of the accused have been travelling abroad, have they taken the Court's permission to do so?

3. The Respondent No. 1 herein, has rejected the request by his letter dated 3/10/2006 under Section 8(1)(j) of the Right to Information Act, 2005 (the RTI Act, for short). There is some confusion over the section whether it is Section 8(1)(j) or 8(1)(i) because the reply is not clear. Besides, the reply does not contain any reason of the Public Information Officer for having come to such a conclusion. Again, the Public Information Officer has not communicated to the Appellant the period within which the appeal against the rejection order has to be preferred and the particulars of the Appellate Authority as required under Section 7(8)(ii & iii) of the RTI Act. Thereafter, the Appellant has filed his first appeal on 16/10/2006 and the Respondent No. 2, who is the first Appellate Authority, has passed his order on 16/11/2006 directing the Respondent No. 1 to furnish the information. He has also added a rider to his order that the Respondent No. 1 should ascertain from the Complainant in the criminal case No. 44/2003 of the Calangute Police Station whether he has any objection for giving the information. Thereupon, the Respondent No. 1 ascertained the views of the said Complainant and forwarded them to the Respondent No. 2. The Respondent No. 2 sent a further letter/communication to the Appellant refusing the information under Section 11 of the RTI Act.

4. Taking objections to the rejection orders of both Respondent No. 1 and 2, the learned Advocate submitted that (i) the first Appellate Authority cannot substitute his opinion for the opinion of the Respondent No.1; (ii) that he has no jurisdiction to change the ground for rejection from Section 8(1)(j) to Section 11 of the RTI Act; (iii) He has also raised a point that the original rejection order of the Public Information Officer is under Section 8(1)(i) and not 8 (1)(j). The Respondent No. 1 has already clarified in his written statement that the rejection was under Section 8(1)(j) though the reasons were not elaborated.

5. Even a cursory reading of the RTI Act shows that the grounds of rejection of the requests for information are mentioned under Section 8 and 9. Section 11, infact, is a procedural section. Section 11 provides for giving a notice to the third party, taking his views by the Public Information Officer before taking a decision

on the request for information. If the decision is to disclose the information, the aggrieved party would be the third party. If the decision is not to disclose the information, then naturally the citizen who requested for the information under Section 6 of the Act is the aggrieved party and has the rights of I & II appeal under Section 19(1) & (3) respectively. The appeal provided under sub-section (4) of Section 11 is by the third party and not the citizen. Before approaching the third party, the Public Information Officer has to form an opinion about the nature of the request whether it could be disclosed or not prime facie. Thus, even before he issues the notice to the third party, the Public Information Officer has to form an intention to disclose the information. If he intends to reject the information on any of the grounds enumerated under Section 8 or 9, the question of seeking the views of the third party even if the information was provided by the third party, does not arise.

6. The above narration of the sequence of the events shows that it is the Respondent No. 2 who has considered whether the request for information is pertaining to the third party or not and directed the Public Information Officer to follow the procedure laid down under Section 11. By directing him to do so, he has substituted his opinion to that of the Public Information Officer. We also do not have any documentary evidence why he did so and also remanded the case back to the Public Information Officer. There are no provisions in the Act for both these actions. In fact, the Appellate order dated 16/11/2006 is confusing, to say the least as on the one hand, it directs the Public Information Officer to furnish the information, while at the same time to "ascertain" the views of the third party. He should have come to a definite conclusion whether the Public Information Officer's rejection order is correct or bad in law. He has not done that and remanded the case to the Public Information Officer.

7. We now come to the request and the decision of the Public Information Officer. The request as mentioned earlier, consists of 4 points as transcribed above. The first question is about the present status of the case. This can be interpreted to mean whether the investigation is complete, chargesheet is filed in a Court of law or is it closed or what is the present position of the case. We do not find anything "personal" in answering this question and therefore, are of the firm opinion that it is not covered under Section 8 (1)(j). It is also not "informed in confidence" by any third party. The question of "ascertaining" the views of

the third party as directed by Respondent No. 2 also does not arise. Similarly, all other questions relate to the process of the investigation and surely form part of the record of case No. 44/2003 of the Calangute Police Station. We, therefore, fail to understand how this can be classified as personal information of the Complainant who filed the complaint in the original criminal case. It does not also fall under Section 11 because the Appellant has not asked what is revealed by the Complainant who cannot be categorized as the third party under the Act. The information sought is from the record of the Police station. We are, therefore, of the opinion that the request for information is neither covered by Section 8(1)(j) nor Section 11. We, accordingly, set aside the letter dated 3/10/2006 of the Public Information Officer, order dated 16/11/2006 of the Respondent No. 2 and the letter dated 24/11/2006 of the Respondent No. 2. We direct the Public Information Officer to furnish the information within 10 days from the date of this order.

8. We find from the replies submitted by the Respondents that an effort is made to hide the information requested. We, therefore, direct the Respondent No. 1 to present himself in person on 7th February, 2007 before us at 11.00 hrs. alongwith an affidavit in reply showing as to why a penalty of Rs.250/- per day should not be imposed on him from 28/10/2006 till the information is submitted.

Pronounced in open Court on this 25th day of January, 2007.

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

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