

# **GOA INFORMATION COMMISSION**

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

Appeal No. 88/2007-08/Police

Mr. Menino Gomes,  
H. No. 466, Near Tonca Bridge,  
Marcela - Goa.

..... Appellant.

V/s.

1. Public Information Officer,  
The Superintendent of Police (North),  
Police Head Quarters,  
Porvorim - Goa.
2. First Appellate Authority,  
The Deputy Inspector General of Police,  
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: 10/01/2008.

Appellant alongwith his Adv. Jose Filipe Melo present.

Adv. K. L. Bhagat for both the Respondents.

## **ORDER**

This disposes off the second appeal filed by the Appellant against the order dated 1/10/2007 of the Respondent No. 2, the first Appellate Authority, hereinafter referred to as the "impugned order". The impugned order reads as follows:

"The certified copy of the enquiry report dated 07.08.1999 may be obtained by the appellant from the Captain of Ports as the original enquiry report was sent to the Captain of Ports.

The issue is involving primarily the Captain of Ports. Police can at best be the nodal officers. PI Old Goa PS is directed to verify the allegations of encroachment and have a meeting with the Captain of Ports so that if any action is required the same can be initiated".

...2/-

2. The Appellant is at a loss to understand whether the appeal is allowed or rejected by the above impugned order. As the requested copy of the enquiry report dated 7/8/1999 was not given to him, it is understood that the first appeal has gone against him. The facts of the matter are that the Appellant requested by his application dated 23<sup>rd</sup> July, 2007 under the Right to Information Act, 2005 (for short the RTI Act) to give him a copy of the enquiry report conducted by the then Police Inspector, Mahesh Gaonkar, which he conducted based on a complaint filed by the Captain of Ports in respect of the encroachment of the riverine land at "Davji" at Ella village. It appears that two trucks were found transporting mud and dumping them into River Mandovi adjoining plot bearing survey No. 40/2 of Ella village. The two trucks were found belonging to Xavier Gracias but were hired by Teofilo D'Souza, owner of the survey No. 40/2. Based on the complaint of the Captain of Ports some "enquiry" was supposed to have been conducted but further action is not known. It is not even known whether any FIR was filed and any action was taken by the Police though the encroachment is a cognizable offence, according to the Appellant, punishable under Section 5 of Goa Land (Prohibition of Construction) Act, 1995 and the Police Inspectors were appointed by the Government vide notification No.16/3/95-RD dated 22/9/1995 to take cognizance of the encroachments of Government land. This being the case, it is not known how the Respondent No. 2 has come to a conclusion that the Police are just "nodal officers".

3. Notices were issued and replies were filed by both the Respondents. Adv. K. L. Bhagat on their behalf and Adv. Jose Filipe Melo on behalf of the Appellant have argued the matter. The main contention of the Respondent No. 1 is that the report pertains to the year 1999 which is not traceable. He has also submitted that it is classified as "miscellaneous papers of minor importance" and have preservation life of only two years according to a circular dated 05/01/1960 of the Police Department. He has not specifically stated whether the copy of the report was destroyed but has submitted that the original was sent to the Captain of Ports. Also the date of the circular mentioning 5/01/1960 seems to be incorrect as on that date Goa was still under the Portuguese rule and no office of the Senior Superintendent of Police existed on that date. Further, we also do not know how such an "enquiry" into a cognizable offence could be termed as minor miscellaneous papers and destroyed or presumed to be destroyed after two years. There is not even a definite statement whether any FIR was registered and if not under what provision an "enquiry" was conducted by the Police when they are competent only to investigate an offence. All the above facts throw a

shadow of doubt over the statement filed before us and reply given to the Appellant by the Public Information Officer. The statement of the first Appellate Authority, Respondent No. 2 states that efforts were made to trace the enquiry report and at the same time a stand is also taken that the report was sent to the Captain of Ports. It is not clear what was being traced if the report was already sent to the Captain of Ports. While denying that the enquiry report is on record of the Police Department, He also took the strange plea that the request for information was not transferred to the Captain of Ports under section 6(3) of the RTI Act, because it is an independent public authority and not under the jurisdiction of the Police Department. It is precisely because the Captain of Ports is another independent Department and is a different public authority, the application or part of the request as the case may be should have been transferred to that public authority. The plain reading of sub-section (3) of section 6 talks about the transfer of application to "another public authority". So this argument is also not tenable. Finally, the direction given by the first Appellate Authority to have a meeting with the Captain of Ports and take fresh action is outside the scope of the RTI Act and has to do with his administrative function.

4. Coming to the prayers of the Appellant to issue a direction to the Respondent No. 1 to trace the report dated 7/8/1999, we agree that efforts made by the Old Goa Police Station were not successful in tracing out the copy of the report. However, we direct the Public Information Officer to state in clear terms whether any FIR was lodged by the Captain of Ports and if so verify and trace out the concerned station diary and case diary and other relevant records to find out what the action was taken and to inform the Appellant in a month's time. The application also should be transferred now to the Captain of Ports who has to trace out the original report, if any, sent by the Old Goa Police and issue a copy to the Appellant within a one month from the date of the order. Copy of this order should also be sent to the Captain of Ports Department. With this direction, the appeal is allowed partially. We are not inclined to grant the request of the Appellant to start penal proceedings against the Public Information Officer.

Pronounced in the open court on this 10<sup>th</sup> day of January, 2008.

Sd/-

(A. Venkataratnam)

State Chief Information Commissioner, GOA.

Sd/-

(G. G. Kampli)

State Information Commissioner, GOA.

