
(2013) 03 BOM CK 0249

In the Bombay High Court

Case No : Writ Petition No. 739 of 2010

Goa Cricket Association and Shri Prasad Phaterpekar, General
Secretary, Goa Cricket Association

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Citation : (2013) 3 ABR 1309 : (2013) 3 ALLMR 833 : (2013) 4 MhLj 453

Hon'ble Judges : Mohit S. Shah, C.J.; R.P. Sondurbaldota, J

Bench : Division Bench

Judgement

Mohit S. Shah, C.J.—This is a Writ Petition filed under Articles 226 and 227 of the Constitution of India. The Writ Petitioners Goa Cricket Association, a Society registered under the Societies Registration Act, and its General Secretary have challenged the order dated 07.10.2010 of the State Chief Information Commissioner allowing the complaint No. 518/SCIC/2010. The State Chief Information Commissioner after overruling the preliminary objection raised by the complainant has directed the Goa Cricket Association to furnish the information to the complainant sought by him by his application dated 12.07.2010. Shri M. Sonak, learned counsel appearing for the petitioners has challenged the order on the following grounds:

(i) The impugned order is without jurisdiction as the State Chief Information Commissioner by himself could not have disposed of the application. Relying on the decision of Division Bench of this Court in Public Information Officer Joint Secretary to the Governor Raj Bhavan, Donapaula, Goa and Secretary to Governor First Appellate Authority, Raj Bhavan, Donapaula, Goa Vs. Shri. Manohar Parrikar Leader of Opposition, Goa State Assembly Complex, Porvorim, Bardez, Goa and Goa State Information Commissioner, Ground Floor, Shram Shakti Bhavan, Patto Plaza, Panaji, Goa, , the learned counsel further submitted that the State Information Commission has to be a multi-member body consisting of the State Chief Information Commissioner and at least one (but not

exceeding ten) State Information Commissioner/s. The State Information Commissioner cannot function with only one member.

(ii) The Public Information Officer of the Sports Authority of Goa had by a communication dated 20.08.2010 rejected the application of the complainant for certain information. If at all the complainant was aggrieved by the said communication, the remedy available to the complainant was to file an appeal before the First Appellate Authority. In case, that decision were to go against the complainant, then further remedy to the complainant would be second appeal before the State Information Commission. However, the complainant filed the complaint before the State Information Commission without availing remedy before the First Appellate Authority under the Right to Information Act. Strong reliance is placed on the decision of a learned Single Judge of this Court in Reserve Bank of India, Mumbai Vs. Rui Ferreira and others, .

(iii) The Commission erred in relying upon the so called guidelines published in the Official Gazette, Government of Goa, dated 08.07.2010 for the purpose of holding that all the sports organizations (Sports Clubs/State Sports Associations) recognised by the Sports Authority of Goa shall be covered under the provisions of RTI Act, 2005. The said notification has no sanctity of law under the Right to Information Act, 2005 ("the Act"). The only provision under which the appropriate Government can lay down the guidelines is in the form of making rules u/s 27 of the Act to carry out the provisions of the Act. However, the guidelines have not been issued u/s 27 of the Act.

(iv) Even otherwise the impugned decision of the Commissioner holding that the Goa Cricket Association is a public authority within the meaning of RTI Act is erroneous and contrary to law.

(v) In any view of the matter, the information sought was not required to be supplied to the complainant.

2. On the other hand, respondent No. 6- Shri Aires Rodrigues (now respondent No. 4) has opposed the petition and supported the impugned decision. Shri Rodrigues has submitted that the impugned decision does not call for any interference, as the Commission has considered all the relevant aspects, including the question of jurisdiction. It is also submitted that this Court would not sit in appeal over the decision of the Commission under RTI Act.

3. As regards the first contention, a Division Bench of this Court has already held in Public Information Officer Joint Secretary to the Governor Raj Bhavan, Donapaula, Goa and Secretary to Governor First Appellate Authority, Raj Bhavan, Donapaula, Goa Vs. Shri. Manohar Parrikar Leader of Opposition, Goa State Assembly Complex, Porvorim, Bardez, Goa and Goa State Information Commissioner, Ground Floor, Shram Shakti Bhavan, Patto Plaza, Panaji, Goa, that the State Information Commissioner is a multi-member body and that the Commission cannot consist of only one member. The Commission must consist of State Chief Information Commissioner and at least one more State Information

Commissioner. This judgment is delivered by a coordinate bench of this Court and is binding on us. In *Namit Sharma Vs. Union of India (UOI)*, , the Supreme Court has also taken the view that the State Information Commission is a multi-member body with judicial members. The contention urged by the learned counsel appearing for the petitioners is, therefore, required to be accepted. The impugned decision must accordingly be set aside on the basis of the law laid down by this Court in the aforesaid decision of the Division Bench.

4. The next question is, whether the matter should now be sent back to the State Information Commission. For that we will have to consider the second contention. Learned counsel for the petitioners has invited our attention to the decision of a Single Judge of this Court in *Reserve Bank of India, Mumbai Vs. Rui Ferreira and others*, . The facts of that case are more or less identical. The complainant therein had sought information from the Reserve Bank of India and PIO rejected the application. The complainant, however, did not file first appeal against the order before the First Appellate Authority, but straight away filed complaint before the State Information Commission u/s 18 of the Act. The State Information Commission directed the RBI to disclose the information. When the question of maintainability of the complaint u/s 18 was raised by RBI, the State Information Commission overruled the objection after observing that the RTI Act is people friendly and user friendly Act and the denial of information by the Court is not in true spirit of the Act. The Commission also observed that this order would not be treated as a precedent in future.

5. The aforesaid decision of the said Information Commission was challenged before this Court and the learned Single Judge observed as under:

6. The Respondent No. 1 however instead of preferring an appeal before the first Appellate Authority against the order of the PIO of the Co-operative Bank refusing information or preferring an appeal against the order of the RBI refusing information on the ground that the information is protected by Section 8(1)(a) of the Act, directly approached the State Commission u/s 18 of the Act for the very same information. The State Commission proceeded to decide the matter, apparently ignoring all the important safeguards enacted in Section 11 of the Act and peculiarly, inspite of coming to the conclusion that normally a complaint of such type made by Mr. Rui Ferreira is not maintainable, proceeded to grant the relief because the complainant had earlier followed the prescribed procedure and the matter had been remanded by the Commission. Peculiarly, the Commission proceeded to grant relief even though the complaint was not found by it to be under any provisions of law because the Act is people friendly and user friendly Act and the denial of information by the Court is not in the true spirit of Act. The Commission also made an order that its order would not be treated as a precedent in future.

7. Ex-facie the impugned order of the Commission dated 14.06.2010 is liable to be set aside on the ground of perversity. Indeed, the Commission has no power to direct the disclosure of information in the proceedings which are considered to

be not maintainable. Since the Commission has done precisely that the order is vitiated and is required to be set aside.

8. Further, the question that arises is whether the Commission would have entertained a complaint from respondent No. 1 directly u/s 18 when respondent No. 1 had failed to file an appeal against the order of the PIO of the Cooperative Bank rejecting the request and against the order of the Reserve Bank of India, refusing the request on the ground that the information is protected by Section 8(1)(a) of the Act. Section 18 confers power on the State Information Commission to receive and inquire into a complaint from any person in the nature of supervisory in the circumstances referred to in that Section. Thus the State Information Commission may entertain a complaint from any person who has been unable to submit a request to the PIO because no such officer has been appointed or if the PIO has refused to accept his application for information or an appeal under the Act; or whether the person has been refused access to any information requested under the Act or whose request has not been responded within the time specified under the Act etc. The case of respondent No. 1 does not fit into either of the circumstances referred to u/s 18(1)(a) to (f).....

6. The fact situation in the present case is almost identical and though we may not castigate the decisions in the same harsh words, the same principle would apply. Section 18 of the Act confers jurisdiction on the State Information Commission to entertain the complaint in cases which do not include the case of refusal by the public authority to disclose the information. The remedy available to the complainant, in such a case, therefore, is by way of First Appeal before the First Appellate Authority.

7. As regards the third contention, Shri Sonak, learned counsel appearing for the petitioners submits that the State Information Commission felt itself bound by the so called guidelines. The First Appellate Authority will also consider itself to be bound by the guidelines, though the same are not in accordance with law.

8. Since the contention whether the petitioner is a public authority within the meaning of the RTI Act, is to be decided by the First Appellate Authority, it shall also decide all the contentions raised before it, in accordance with law.

9. In above view of the matter, it is not necessary for us to examine the other contentions, on merits, which will be examined by the First Appellate Authority. In case the First Appellate Authority and/or Second Appellate Authority holds against the petitioners on the question whether the Goa Cricket Association is a public authority within the meaning of RTI Act, it will be open to the petitioners to challenge the guidelines in further proceedings which may be taken out against the order of the Authority/Commission under the Act. Subject to the above clarifications, the Writ Petition is allowed. The impugned decision of the State Information Commission is set aside and it will be open to respondent No. 6 to challenge the decision of the Sports Authority of Goa dated 20.08.2010

before the First Appellate Authority. If respondent No. 6 (now respondent No. 4) files the First Appeal before the First Appellate Authority within four weeks from today, the First Appellate Authority shall decide the matter in accordance with law, without raising any objection about limitation.