

7786/2023



From:

K.S Anilkumar,  
St. No. 4396, L/Fireman,  
Cochin Port Authority,  
Cochin- 682 009.

To

Sri. VikasNarwal, IAS,  
Appellate Authority under the RTI Act,  
Deputy Chairman,  
Cochin Port Authority,  
Cochin- 682 009.

NO RTI  
[Signature]

Sir,

Sub: Appeal against the denial of information under the RTI Act.

Ref: (i)My letter dated 13.6.2023, seeking information under the RTI Act.

(ii)Central Public Information Officer's reply dated 19.6.2023.

1. As per the letter under reference(i) above, I have requested for an information, copy of a 'complaint submitted by Mr.Sathyajith, Charge man (ME), against me in the Memorandum No. MD/GE/B2/Disci/KSAK/2022 dated 29.11.2021, in AnnexureII'. But as per reply letter under reference(ii) above, the same was denied by the Central Public Information Officer stating that the **information sought for is third party information and cannot be disclosed** in terms of the provisions of Sec.8(1)(j) of the RTI Act, 2005.
2. It is submitted that the above reason stated is baseless due to the grounds narrated in the following paragraphs.
3. Sec.8(1)(j) of the RTI Act is reproduced below for your goodsef's ready reference:

“(j) information which relates to personal information **the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the**

Forwarded to Deputy Conservator. CPA

मुख्य अग्निशमन-सह-सहायक सुरक्षा  
प्रदूषण नियंत्रण अधिकारी  
Chief Fire Cum-Asst. Safety  
Pollution Control Officer  
कोचिन पत्तन प्राधिकरण  
COCHIN PORT AUTHORITY  
[Signature] 11/7/23

*privacy of the individual* unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

4. It is submitted that the information sought for is the copy of a complaint received by the Deputy Conservator from Sri. Sathyajith, Charge man (ME), which is so stated in the Statement of Imputations of Misconduct or Misbehaviour attached as Annexure II to the Charge Memo No. MD/GE/B2/Disci/KSAK/2022 dated 29.11.2021 issued to the appellant. (Copy of the same is enclosed for ready reference). An Inquiry was conducted in the allegations, without complying the principles of natural justice. The said complaint copy was requested in the Inquiry proceedings, but was not given to the appellant and the said so called Inquiry was abruptly closed one day. The next option for the appellant was to request the copy of the complaint under RTI Act. The complaint is against the appellant. It goes without saying that giving the copy of the said complaint will not in any way prejudice anyone, especially the complainant unless it is a false one. Moreover, the aforesaid memorandum would show that the allegations in it bear public importance, if not false and cooked up, being an act of criminal nature. Also it is a part of the records of a Public Authority.
5. Reference (ii) reply is a one line reply without giving the reasoning for such a decision or conclusion. Clause (j) of sub section (1) of Section 8 requires the Information Officer to first determine whether the information sought falls within the meaning of personal information. Where the information sought falls within the scope of personal information and has no relationship to any public activity or interest the information is exempt from disclosure under the RTI Act. However, where there exists a public interest in the disclosure of the information sought, the test to be applied by the Information Officer is different. The Information Officer must evaluate whether the larger public interest justifies the disclosure of the information notwithstanding

the fact that the information is personal information. In doing so, the Information Officer must balance the privacy interest of the individual whose personal information will be disclosed with the right to information of the public to know the information sought. Interestingly, the information sought herein is the complaint against the appellant himself, who is not at all concerned about the privacy interest. So, what prevents the Information Officer in supplying the copy is known to him only.

6. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. As pointed out earlier, the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. The requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The requirement to record reasons is a principle of natural justice and a check against the arbitrary exercise of power by judicial and quasi-judicial bodies. In making a determination under clause (j) of clause (1) of Section 8 in a given case, it would not be satisfactory if an Information Officer were merely to record that the privacy interest outweighed the public interest. Something more is required. By providing an analytical framework to address the two interests to be weighed and requiring the Information Officer record detailed reasons within this framework, the arbitrary exercise or discretion of the Information Officer is guarded against. Is the decision of the Information Officer in reference(ii) above reveal the reasons for such conclusion and, if not, is it not bad in law?
7. The above are the positions of law founded by the Hon'ble Supreme Court of India and other Courts of the country.
8. In the circumstances, the appellate Authority may be pleased to set aside the reply/ order by the Public Information Officer and direct the concerned to issue the information sought for.

  
Appellant: K.S Anilkumar

10-07-2023

RTI/Marine/2023-S(Part-I)

Dated: 09.08.2023

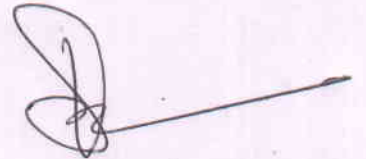
**ORDER**

1. An RTI Application was filed by the appellant Shri. K.S.Anilkumar, Staff No.4396, L/Fireman, CoPA, requesting to provide the copy of complaint by Sathyajithreferred in paragraph No.8 in Annexure-II in Memorandum No.MD/OE/B2/Disci./KSAK/2022 dated 29.11.2021 issued to the appellant, which was replied to by the CPIO, Marine Department on 19.06.2023 denying the information citing Section 8(1)(j) of RTI Act 2005.
2. Aggrieved by the CPIO's reply, the appellant preferred an appeal dated 10.07.2023 before the First Appellate Authority stating that the information sought was the complaint against the appellant himself and that it is not third party information nor would cause unwarranted invasion of privacy of individual, who is himself.
3. The Appellant was given an opportunity of hearing on 01.08.2023. The submissions of both the parties are considered. It is also understood that a criminal case filed in which the appellant is the accused is pending in relation to the matter of complaint sought by the appellant. As per the Annexure II referred by the appellant, the complaint to the Dy. Conservator, CoPA is made by Mr. Sathyajith stating that the appellant had made conversation in a very insulting manner to Mr. Sathyajith's wife. The Appellant as well as Mr Sathyajith are employees of CoPA. It is felt that the information sought would contain third party information relating to the privacy of the woman referred in the complaint.
4. After considering the relevant aspects, it is seen that the information sought relates to the personal information of a third party, the disclosure of which has no larger public interest and would cause an unwarranted invasion of the privacy of the third party and hence exempted under section 8 (1) (j) of the RTI Act.
5. Accordingly, the decision of the CPIO is upheld and the appeal dismissed.
6. Second Appeal, if any, against the above decision shall lie within ninety days from the date of receipt of this communication, with the Chief Information Commissioner, whose name and address are given below:

Shri. Y.K. Sinha  
Chief Information Commissioner  
Room No. 401, IVth Floor, CIC Bhawan  
Baba Gangnath Marg  
Munirka, New Delhi - 110 067

To

Shri. K.S.Anilkumar, Staff No.4396,  
L/Fireman, CoPA,



(Vikas Narwal, IAS)  
Appellate Authority/Dy. Chairperson  
Cochin Port Authority, Cochin