

## **SYNOPSIS AND LIST OF DATES**

### **DATES**

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**29.11.2010**

Respondent No.3 herein sought information under the Right to Information Act about action taken if any on the complaint/representations made by him to the Governor of Goa against Advocate General, copies of all noting sheets and correspondence processing the complaints / representations made by him to the Governor of Goa against the Advocate General of Goa. A copy of letter dated 29.11.2010 by the Respondent No. 3 herein to the Secretary to Governor of Goa is annexed herewith and marked as **ANNEXURE:P-1.**

**30.11.2010**

Petitioner herein replied that an affidavit has been filed by the Raj Bhavan Office before Hon'ble High Court of Bombay at Goa that the Governor is not a Public Authority under

the Right to Information Act, 2005 and that pending decision of the Hon'ble Court, the office cannot respond to the request. A copy of the letter dated 30.11.2010 by the Petitioner herein to the Respondent No.3 is annexed herewith and marked as **ANNEXURE:P-2.**

**16.12.2010** Respondent No.3 filed a complaint/legal notice to the Governor of Goa in the matter, seeking information within 48 hours. A copy of the letter dated 16.12.2010 by the Respondent No.3 the Governor of Goa is annexed herewith and marked as **ANNEXURE:P-3.**

**21.12.2010** That the Respondent No. 3 herein filed complaint before the State Information Commission which was registered as Complaint No. 613/SCIC/2010. A copy of Complaint No. 613/SCIC/2010 filed before the State Information Commission is

annexed herewith and marked as **ANNEXURE:P-4.**

**22.12.2010** The State Chief Information Commissioner issued notice to the Governor and Special Secretary to Governor (Petitioner herein), on a complaint dated 21.12.2010, filed before the State Information Commission by Respondent No.3 and fixing the case for hearing on 4.1.2011. A copy of Notice dated 22.12.2010 issued is annexed herewith and marked as **ANNEXURE:P-5.**

**03.01.2011** That a reply was filed by the Secretary to Governor of Goa objecting to the very issuance of notice and the impleadment of the Governor of Goa, as party in the complaint. A copy of Reply dated 03.01.2011 filed by the Secretary to the Governor of Goa is annexed herewith and marked as **ANNEXURE:P-6.**

- 03.01.2011** That a Reply dated 03.01.2011 was also filed by the Petitioner herein before the State Information Commission which is annexed herewith and marked as **ANNEXURE:P-7**.
- 21.01.2011** That a Rejoinder was filed by the Petitioner herein in Complaint No. 613/SCIC/2010 before the State Information Commission which is annexed herewith and marked as **ANNEXURE:P-8**.
- 18.03.2011** The State Chief Information Commissioner passed an order that the Governor need not appear before the Commission. A copy of Order dated 18.03.2011 passed by State Information Commissioner is annexed herewith and marked as **ANNEXURE:P-9**.
- 23.03.2011** An application is submitted before the Chief Information Commissioner praying that the case may be kept in abeyance until the Hon'ble High Court passes final order in the case pending before the Hon'ble Court, i.e.

478 of 2008. A copy of Application filed by the petitioner herein before the State Information Commission is annexed herewith and marked as **ANNEXURE:P-10**.

**31.03.2011** The Chief Information Commissioner passed an order that

- (i) The complaint against Governor is dismissed.
- (ii) The matter/application is referred back to PIO to deal with the same in accordance with the law and within the prescribed period.

A copy of Order dated 31.03.2011 passed by the State Chief Election Commissioner is annexed herewith and marked as **ANNEXURE:P-11**.

**18.04.2011** That a Writ Petition (No.237/2011) was filed before the Hon'ble High Court of Bombay at Goa. A copy of Writ Petition No. 237 of 2011 filed before the Hon'ble High Court of

Bombay at Goa is annexed herewith and marked as **ANNEXURE:P-12**.

**12.08.2011** That an Additional Affidavit was filed by the Petitioner herein before the Hon'ble High Court of Goa which is annexed herewith and marked as **ANNEXURE:P-13**.

**14.11.2011** Impugned Order was passed by the Hon'ble High Court of Bombay at Goa.

**.11.2011** Hence, SLP is filed.



To,  
THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE SPECIAL LEAVE PETITION OF  
THE PETITIONER ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. The Petitioner above-named is filing the present Petition for Special Leave to Appeal under Article 136 of the Constitution of India against the Judgment and Order dated 14.11.2011 passed by the Hon'ble High Court of Bombay at Goa in Writ Petition No. 237 of 2011 whereby -  
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**2. QUESTIONS OF LAW:**

The following substantial questions of law of general public importance arise for determination by this Hon'ble Court.

**A. WHETHER,** the Hon'ble High Court has erred in not considering that Governor, is not a 'public authority' for the purposes of the RTI Act?

**B. WHETHER,** the Hon'ble High Court has erred in not considering that in our constitutional democracy, it



is the consolidated will of the people, as the Constitution of India, which is the sovereign, and the high constitutional offices of the President and the Governor of State, manifest the sovereign, through whom and under whose name, the authority vests?

**C. WHETHER,** the Hon'ble High Court has erred in not considering that under Art. 361, the immunity granted to the Governor is plenary, and therefore the Governor is not answerable to any court or authority in exercise and performance of his powers and duties of his office, and such immunity includes any act done or purported to be done?

**D. WHETHER,** the Hon'ble High Court has erred in not considering that the relationship between the high constitutional offices of President of India and the Governor of State is fiduciary?

**E. WHETHER,** the Hon'ble High Court has erred in not considering that the Governor is not amenable to the RTI Act, being a 'competent authority' as distinguished from a 'public authority'?

**F. WHETHER,** the Hon'ble High Court has erred in not considering that the Governor's office forwards all

information to concerned departments of the Government, and therefore any information which may be granted under the RTI Act, is available with one of the government departments?

**G. WHETHER,** the Hon'ble High Court has erred in not considering that apart from the information pertaining to routine governance functions, which is available with one of the government departments, and the high constitutional office of the Governor is constitutionally obliged to protect disclosure of the other information dealt with by the Governor, of sensitive nature pertaining to the internal peace, security and integrity of the country, and therefore the Governor is not amenable to the RTI Act?

**H. WHETHER,** the Hon'ble High Court has erred in not considering that only the constitutional courts have the power of judicial review pertaining to the high constitutional office of the Governor, and such power cannot be deemed to be available to any statutory authority under the RTI Act?

**I. WHETHER,** the Hon'ble High Court has erred in not considering that under the RTI Act, there is a clear and recognized scheme where the 'competent

authority' is different from 'public authority', and while the former is defined to include four constitutional offices of peremptory importance, the latter, per definition includes any authority/body/institution of self governance?

**J. WHETHER,** the Hon'ble High Court has erred in not considering that the words authority-body-institution under Sec. 2(h) of the RTI Act, depict a genus of which they are deemed to be species and such genus, per definition, represents an entity with a sense of subordination and the term 'authority' cannot be deemed to apply to the Governor, which is subordinate to none, under the Constitution, but is rather the Constitutional and Formal Head of the State?

**K. WHETHER,** the Hon'ble High Court has erred in not considering that even Sec. 25 of the RTI Act, manifests the livid scheme of the Act, where Governor is not amenable to the Act, since the reporting requirements under Sec. 25 are not workable vis-à-vis the position of the Governor, who does not 'report' to any ministry/department of the Government?

**L. WHETHER,** the Hon'ble High Court has erred in not considering that Sec. 8(1)(e) and Sec. 28 posit the distinct functions of the competent authorities, which are not functions of a 'public authority' which shows that the 'competent authority' and 'public authority' are not the same, or overlapping in the Scheme of the RTI Act?

**M. WHETHER,** the Hon'ble High Court has erred in not considering that seeking disclosure of any information from the Governor is only in exceptional circumstances, and that too, only a prerogative of the constitutional courts, which cannot be made a subject matter of routine, and more so when information liable for disclosure, is available with one of the government departments?

**N. WHETHER,** the Hon'ble High Court has erred in not considering the very purport and scheme of the RTI Act, where the Governor, being a competent authority if made subject to information disclosure, would result in anomaly since the Governor is the appointing authority of the State Information Commissioner and is also vested with the power to recommend for removal?

- O.** Whether the Impugned Judgment and Order is contrary to the provisions of the RTI Act?
- P.** Whether the Hon'ble High Court has not considered correctly that information sought is covered under the exemption of clause (c) and (e) of Sub Section (1) of Section 8 of the RTI Act?
- Q.** Whether information relating to reports made by Governor to the Union Home Minister is liable for disclosure under the RTI Act?
- R.** Whether information relating to reports made by Governor to the Union Home Minister can be classified as information pertaining to a "public authority"?
- S.** Whether the reports sought being not relatable to the functioning of the Government are clearly are outside the scope of the RTI Act?
- T.** Whether the Hon'ble High Court has erred in holding that the report in question was made under Art. 356

of the Constitution, whereas the report in fact was not made under Art. 356 of the Constitution?

**U.** Whether the Hon'ble High Court has erred in holding that a report under Art. 356 of the Constitution (though that was not the case in the present matter), is liable for disclosure under the RTI Act?

**V.** Whether the Hon'ble High Court has erred in holding that a report under Art. 356 of the Constitution (though that was not the case in the present matter), is not made in fiduciary capacity by the Governor?

**3. DECLARATION IN TERMS OF RULE 4(2):**

The Petitioner states that no other petition seeking leave to appeal has been filed by the Petitioner against the Order dated 14.11.2011.

**4. DECLARATION IN TERMS OF RULE 6:**

The **ANNEXURES P-1 TO P-** produced along with the present Petition are true copies of the

pleadings/documents which formed part of the record of the case in the High Court / Lower Authorities against whose order the leave to appeal is sought for in this petition.

**5. GROUNDS:**

In the present Petition, leave to appeal is sought on the following amongst other Grounds, which are set out hereinafter without prejudice to one another:-

**A. BECAUSE,** the Hon'ble High Court has erred in not considering that Governor, is not a 'public authority' for the purposes of the RTI Act.

**B. BECAUSE,** the Hon'ble High Court has erred in not considering that in our constitutional democracy, it is the consolidated will of the people, as the Constitution of India, which is the sovereign, and the high constitutional offices of the President and the Governor of State, manifest the sovereign, through whom and under whose name, the authority vests. The constitutional scheme

postulates that the Executive Power of the State vests in the Governor. Such power is exercised in the name of the Governor. In the cabinet system of the Government, with an elected head of the State, the Governor is the formal and constitutional head of the Government. The Governor therefore is a manifestation of the State. The Governor does not perform routine functions of governance, which are left to the various ministries/departments of the Government. The Governor acts with the aid and advice of the Council of the Ministers, and constitutional courts have recognized time and again that the Governor is bound by the advice tendered by the council of ministers. Only in exceptional circumstances has the Constitution entrusted a function to be discharged by the Governor on his own, in his discretion.

**C. BECAUSE,** the Hon'ble High Court has erred in not considering that under Art. 361, the immunity granted to the Governor is plenary, and therefore the Governor is not answerable to any court or authority in exercise and performance of his powers



and duties of his office, and such immunity includes any act done or purported to be done. Art. 361 provides with utmost clarity, the position of the Governor under the Constitution. The said article posits that the Governor is not 'answerable' to any Court for anything done or purported to be done by the Governor or his office. The exception marked by Art. 361 is a constitutional exception, and so introduced with manifest intent to oust the head of the State and the Union from routine scrutiny, and therefore they are not 'answerable'. This may be juxtaposed from other such Constitutional provisions which oust only judicial review, e.g. Art. 122 provides that any proceedings of the house shall not be 'enquired' into by any Court, whereas the word used in Art. 361 is 'answerable'. The word covers not only the Governor personally, but also his office. Constitutional Courts have recognized that Art. 361 would not apply to an appointee of the Governor, however in so far as the Governor and his office are concerned, the immunity is absolute. It does not inspire confidence in logic or in law, to posit a situation where the Governor is not

answerable to Constitutional Courts, but is to be held answerable to statutory authorities under the RTI Act. Such a situation would be an aberration to the Constitutional scheme, and would render nugatory the whole purpose of Art. 361.

**D. BECAUSE,** the Hon'ble High Court has erred in not considering that the relationship between the high constitutional offices of President of India and the Governor of State is fiduciary. This is, de-hors the settled position of law in this regard. The Constituent Assembly Debates clearly show that the choice between an elected governor or one appointed by the Centre was made most consciously, and the Governor is in a fiduciary position qua the President.

**E. BECAUSE,** the Hon'ble High Court has erred in not considering that the Governor is not amenable to the RTI Act, being a 'competent authority' as distinguished from a 'public authority'.

**F. BECAUSE,** the Hon'ble High Court has erred in not considering that the Governor's office forwards all

information to concerned departments of the Government, and therefore any information which may be granted under the RTI Act, is available with one of the government departments. The underlying premise of our Constitution is a democratic and republic country with the cabinet system of government, where the routine governance functions are not done by the Heads of the Union/State but are done by the ministries/departments of the Government, and both information and responsibility thereto, lies with the concerned ministry/department alone, which fully serves all the check and balance requirements. The Hon'ble High Court has erred in not considering that apart from the information pertaining to routine governance functions, which is available with one of the government departments, and the high constitutional office of the Governor is constitutionally obliged to protect disclosure of the other information dealt with by the Governor, of sensitive nature pertaining to the internal peace, security and integrity of the country, and therefore the Governor is not amenable to the RTI Act.

**G. BECAUSE,** the Hon'ble High Court has erred in not considering that only the constitutional courts have the power of judicial review pertaining to the high constitutional office of the Governor, and such power cannot be deemed to be available to any statutory authority under the RTI Act. It is most important to note that the exceptional circumstances where the Constitutional Courts have agreed to judicially review an act of the Constitutional Head of the State, were due to the exceptional high powers of Constitutional Courts. It cannot be argued that the statutory authorities under the RTI Act would have the selfsame powers as the high Constitutional Courts, for summoning of records and documents from the Governor, who otherwise is not 'answerable' under Art. 361.

**H. BECAUSE,** the Hon'ble High Court has erred in not considering that under the RTI Act, there is a clear and recognized scheme where the 'competent authority' is different from 'public authority', and while the former is defined to include four constitutional offices of peremptory importance, the

latter, per definition includes any authority/body/institution of self governance. It is not possible to contemplate that the Governor is covered under the ambit of 'public authority' in the RTI Act. The Act is replete with illustrations positing that the RTI Act cannot apply to the Governor. The Governor has been included the term 'competent authority'. The Governor is the appointing authority of the State Information Commissioner. The Governor is also vested with the power to recommend for removal. The reporting requirements under Sec. 25 are not workable vis-à-vis the position of the Governor. Sec. 25 further manifests the very spirit of the scheme contemplated under the RTI Act, where the body/authority is supposed to be under some government ministry/department, and accordingly the reporting requirements have been postulated under the Act. However, the Governor is not subject to, or falling under, any department/ministry of the Government.

**I. BECAUSE,** the Hon'ble High Court has erred in not considering that the words authority-body-institution under Sec. 2(h) of the RTI Act, depict a genus of which they are deemed to be species and such genus, per definition, represents an entity with a sense of subordination and the term 'authority' cannot be deemed to apply to the Governor, which is subordinate to none, under the Constitution, but is rather the Constitutional and Formal Head of the State. Under the RTI Act, there is a clear and recognized scheme where the 'competent authority' is different from 'public authority'. While the former is defined to include four constitutional offices of peremptory importance, the latter, per definition includes any authority/body/institution of self governance. Applying the recognized principles of ejusdem generis, the words authority-body-institution depict a genus of which they are deemed to be species. Such genus, per definition, represents an entity with a sense of subordination. The term 'authority' cannot be deemed to apply to the Governor, which is subordinate to none, under the Constitution, but is rather the Head of the

State— Constitutional and Formal. In a constitutional democracy, it is the Constitution which is supreme, and the ultimate sovereign; however the Constitution itself provides that all executive acts of the State shall be represented in name of the Governor, in whom vests the executive powers of the State. Therefore, Governor is not subordinate to any other entity under the Constitution, and is not an 'authority', but is rather the manifestation of the State itself. Reliance is placed on the dictionary meaning of the term 'authority' which manifests a sense of subordination to another, which characteristic is wholly absent when analysed for the position of the Governor, and therefore the Governor cannot be deemed to fall under the term 'public authority'.

**J. BECAUSE,** the Hon'ble High Court has erred in not considering that even Sec. 25 of the RTI Act, manifests the livid scheme of the Act, where Governor is not amenable to the Act, since the reporting requirements under Sec. 25 are not workable vis-à-vis the position of the Governor,

who does not 'report' to any ministry/department of the Government.

**K. BECAUSE,** the Hon'ble High Court has erred in not considering that Sec. 8(1)(e) and Sec. 28 posit the distinct functions of the competent authorities, which are not functions of a 'public authority' which shows that the 'competent authority' and 'public authority' are not the same, or overlapping in the Scheme of the RTI Act.

**L. BECAUSE,** the Hon'ble High Court has erred in not considering that seeking disclosure of any information from the Governor is only in exceptional circumstances, and that too, only a prerogative of the constitutional courts, which cannot be made a subject matter of routine, and more so when information liable for disclosure, is available with one of the government departments. The salutary purpose of the RTI Act is based on the famous quote, 'little sunshine is the best disinfectant' and vouches for transparency in the discharge of governmental business and governance functions



by democratically elected representatives of the people. The day to day governmental decisions are a responsibility of a given department/ministry of the government. Any information which is received by the Governor, is deemed to be available with the corresponding department/ministry of the State Government. Apart from the routine governance functions, which in fact are done only *in the name of Governor*, but not really by the Governor himself; there are only rare functions of constitutional importance, which are required to be done by the Governor in his individual capacity by the Constitution. However, these functions are constitutional functions of the Constitutional Head of the State. Therefore, the information generated in course of the discharge of routine governance functions is available with the concerned department and transparency is in no way adversely affected by positing the Governor outside the ambit of the RTI Act. In so far as information pertaining to the exercise on rare occasions of constitutional functions by the Governor is concerned, it is well recognized that the 'right to

know' has its limitations and is not absolute. Curiously, the 'right to know' has always therefore been recognized more as a part of the 'freedom' of speech and expression under Art. 19(1)(a) of the Constitution, and is not an absolute right.

**M. BECAUSE,** the Hon'ble High Court has erred in not considering the very purport and scheme of the RTI Act, where the Governor, being a competent authority if made subject to information disclosure, would result in anomaly since the Governor is the appointing authority of the State Information Commissioner and is also vested with the power to recommend for removal.

**N. BECAUSE,** information relating to reports made by Governor to the Union Home Minister is not liable for disclosure under the RTI Act, since it concerns the internal peace and security aspects, and is sensitive in nature, and arguendo assuming RTI Act to be applicable, such information is exempt under the RTI Act. Further, information relating to reports made by Governor to the Union Home Minister

cannot be classified as information pertaining to a “public authority” and report in question, is not relatable to the functioning of the Government and therefore, clearly outside the scope of the RTI Act.

**O. BECAUSE,** the Hon’ble High Court has erred in holding that the report in question was made under Art. 356 of the Constitution, whereas the report in fact was not made under Art. 356 of the Constitution. This error has gravely prejudiced the case of the petitioner, and further, the High Court has held on this basis that the report is not given in fiduciary capacity, and therefore committed a fundamental error in law. Further, the Hon’ble High Court has further erred in laying down that a report under Art. 356 of the Constitution (though that was not the case in the present matter), is liable for disclosure under the RTI Act.

**P. BECAUSE,** the Hon’ble High Court has also erred in holding that a report under Art. 356 of the Constitution is not made in fiduciary capacity by the Governor, since such position directly emanates

from the Constitution, and is also reflected in the Constituent Assembly Debates. The entire discussion on the choice between an elected governor and one appointed by the Centre shows that the Governor is in a fiduciary position qua the President.

## **6. GROUNDS FOR INTERIM RELIEF .**

- i. THAT** the Petitioner has a prima facie case in its favour against the Respondents and balance of convenience lies heavily in its favour against the Respondents and Petitioner will suffer irreparable loss and damage of public money if the impugned order is not stayed.
  
- ii. THAT** it is the petitioner's contention that information being demanded from the petitioner, is not based on the correct position in law, and in this regard, contempt notice has already served upon the petitioner threatening for contempt proceedings if the information sought is not given. Without commenting on the propriety of such notice, it is

submitted that therefore, it is important that the effect and operation of the impugned judgment, order and directions may kindly be stayed immediately, as an ad-interim relief, and may kindly be confirmed after hearing the respondents.

**7. MAIN PRAYER:**

It is, therefore, Most Respectfully prayed that this Hon'ble Court may be pleased to:-

- a)** Grant Special Leave to appeal against the Judgment and Order dated 14.11.2011 passed by the Hon'ble High Court of Bombay at Goa in Writ Petition No. 237 of 2011; and
- b)** Pass any such other and further orders as this Hon'ble Court may deem fit in the facts and circumstances of this case.

**8. PRAYER FOR INTERIM RELIEF:**

It is, therefore, Most Respectfully Prayed that this Hon'ble Court may be pleased to:-

- a)** Grant ad-interim ex-parte stay of the operation of the Judgment and Order dated 14.11.2011 passed by

the Hon'ble High Court of Bombay at Goa in Writ  
Petition No. 237 of 2011; and

- b)** Pass such other and further Order(s) as this  
Hon'ble Court may deem fit in the facts and  
circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE  
PETITIONER HEREIN AS IN DUTY BOUND SHALL  
EVER PRAY.

Drawn by:

**[RISHABH SANCHETI]**

Counsel for the Petitioner

FILED BY:

**[RAHUL KAUSHIK]**

ADVOCATE ON RECORD

**Settled by:**

**[Vivek K. Tankha]**

**ASG**