

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

CORAM: Shri Juino De Souza State Information Commissioner

Appeal No. 167/SIC/2011 / 505

T. Nagarajan,
C-1/1 Silvergate Estate,
Aquem, Margao –Goa
403 601

..... Appellant

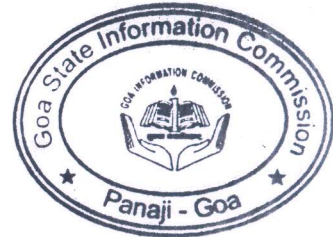
v/s

1. Public Information Officer,
Executive Engineer (TRG),
O/o Chief Electrical Engineer,
Electricity Department,
Vidyut Bhavan Panaji – Goa.
2. FAA, Supt. Engineer, II(N),
Electrical O & M
Electricity Dept., Vidyut Bhavan
Panaji – Goa

..... Respondents

Relevant emerging dates:

Date of Hearing : 01-08-2016
Date of Decision : 01-08-2016



ORDER

1. Brief facts of the Case are that the Appellant had vide an application dated 26/04/2011 sought certain information from the Respondent PIO, Power department, Govt. Secretariat to supply copies of any information on notifications other than the Notification 3/24/90-IND-part(I) dated 30-09-91 published in the official Gazette of Govt. of Goa series I No.27 dated 03/10/1991. The Appellant had asked to furnish any order, any file notings, any other documents or any material in any form that shows that the industries drawing power at EHT voltage were excluded from the rebate scheme which was introduced by the above mentioned notification.
2. It is seen that since the Appellant had addressed the application to the PIO, Power Dept Government of Goa Secretariat, the Secretary (Power) vide letter 27/04/2011 forwarded the RTI application to the o/o Chief Electrical Engineer (CEE), Electricity Department for further action. It is also observed that vide letter dated 22/05/2011 the PIO, in the office of the CEE furnished a reply to the Appellant stating that the desired information is the subject matter of a court proceeding which matter is sub judice and as such information cannot be given.

...2

3. The PIO also stated in the reply that information sought doesn't come under the ambit of the information as per the sections of 2 (f), (i) (J) of the RTI Act, still he has tried to give his maximum as he believe in informed citizenry and transparency of information. The PIO justified by stating that the information must be a material which could be in any of the forms including records, documents, memos, e-mails, opinions, advice etc and Section 2(i) of the Act gives an inclusive definition of 'record' so as to include a document, manuscript and file, etc and thus a person under the RTI Act cannot ask for a reply and cannot demand a decision and cannot ask the PIO to give something which is not available with him or in the records available with him.
4. It is also stated by the PIO that asking of hypothetical questions, demanding reasons for a decision or asking as to why a particular decision was taken or what future course of action a public authority will take or whether a particular policy applies to a particular set of circumstances are all questions beyond the purview of the RTI Act to be precise, no one can demand a decision in the name of an information.
5. The Appellant not being satisfied thereafter filed a First Appeal on 24/06/2011 which disposed off by the First Appellate Authority (FAA) vide order dated 05/07/2011. The FAA in his order has recorded the arguments of the PIO that the Appellant cannot ask questions which do not have answer or such answers are indeed a decision or determination of an issue or adjudication or something concerning adjudication process rather that an "information" besides the citations of 'Decision of High Court of Bombay at Goa in W.P no 419/2007 and Decision of Goa State Information commission in Appeal no.87/SCIC/2009 dt. 14/1/2010 in which it is held that no one can claim answers for questions like whether , why, what, how etc.
6. The FAA has also noted that the matter is sub judice before the Honorable Supreme Court and before the Court at Panjim under the Prevention of Corruption Act, where the Appellant has been named as an accused in the subsidy Scam and the Honorable Supreme Curt is seized of the matter in petitions (s) for Special Leave to Appeal (Crl) No(s) 6950/2007 (from the judgement and order dated 26/10/2007 in CRL PRA MAUVIN GODINHO Vs STATE OF GOA it is not possible to furnish information.

7. The FAA finally in his order stated that 'On perusing the application under RTI Act, 2005 and reply given by the SPIO, it is observed that the applicant has asked some hypothetical record which might have not even have been formed and while accepting the arguments of the State Public Information Officer in this context, that the information which has been asked does not come under the ambit of information as per Right to Information Act, 2005 as the same appears to be hypothetical, the FAA however directed the PIO to provide inspection of all records /information available with him to the Appellant within a fortnight'. Being aggrieved the Appellant then filed a Second Appeal on 05/08/2011.
8. During the hearing, the Appellant Shri T. Nagarajan is absent despite being aware of the date of hearing, it is further observed from the proceeding sheet that he has continuously remained absent from 08/05/2012. The Respondent SPIO, Executive Engineer (Training) Electricity Dept. Shri J. S. Hiremath alongwith Mr. Damodar Naik, Asstt. Engineer are both present in person.
9. The Respondent PIO submits that as per the order of the FAA he is willing to extend full cooperation to the Appellant by giving inspection of files and information documents as required. The Respondent files a written declaration dated 03/08/2016 confirming the facts and requests that this Appeal of 2011 be disposed off which is taken on record.
10. The Commission observes that although the information asked is in question form, the same can be furnished to the Appellant and hence finds that no intervention is required with the order of the FAA which is a reasonable and a justifiable order. The Appellant may approach the office of the PIO and take inspection of the said files and collect whatever information he so desires within 30 days of the date of this order and the PIO will extend full cooperation in furnishing the said information free of cost. **With these directions the Appeal accordingly stands disposed off.**

All proceedings in Appeal case also stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.



Sep
(Juino De Souza)
State Information Commissioner

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

CORAM: Shri Juino De Souza: State Information Commissioner

Complaint No.96/SIC/2012/490

Mukund G. Joshi,
Businessman,
H. No.613,
Durgawadi, Taleigao,
Tiswadi – Goa.

..... **Complainant**

v/s

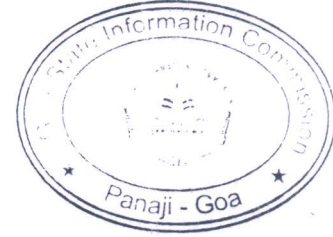
Public Information Officer,
Mamlatdar of Tiswadi,
Panaji – Goa

..... **Respondents**

Relevant emerging dates:

Date of Hearing : 04-08-2016

Date of Decision : 04-08-2016



ORDER

1. Brief facts of the case are that the Complainant vide his application dated 02/04/2012 sought certain information regarding a property surveyed under survey no 3/1 of Village Durgawadi, Talegao, Goa wherein one of the Mundkar late Francisco Xavier Afonso had filed purchase application no. MUND/JM/I/PUR/TAL/48/92 and deposited an amount as per order dated 23/09/1996.
2. The RTI applicant who is the Complainant herein filed an application for withdrawal of the amount deposited by the mundkar however as the said amount has not been disbursed to him he sought information about the status of his application pending before the Jt Mamlatdar – I, Panaji who is the Respondent PIO under RTI Act, 2005.
3. It is the case of the Complainant that he failed to receive any reply within the prescribed time frame of thirty days and hence has filed a direct complaint with the Commission registered on 28/05/2012 and has prayed that the Respondent PIO be directed to furnish information and other reliefs.

...2

4. During the hearing the Complainant is represented by Advocate Shri A. Kundaikar who is present in person. The Respondent PIO is absent without intimation to the commission. It is seen from the Roznama that the PIO was absent on the last hearing also and such absence is viewed seriously by the Commission.
5. The Learned Advocate Shri A. Kundaikar for the Complainant submits that the Complainant is the owner of the property and the Mundkar by virtue purchase application case No MUND/JMI/PUR/TAL/48/92 MUND/JM/I/PUR/TAL/48/92 had deposited an amount as per order dated 23/09/1996. Since the amount was deposited by the Mundkar the Complainant approached the Accounts section for withdrawal of the amount where upon which it was informed that the details were not traceable and therefore an RTI application dated 02/04/2012 was filed by the Complainant.
6. The Learned Advocate Shri A. Kundaikar for the Complainant further submits that although the mandatory period of 30 days had expired the PIO did not furnish any information and which is why the Complainant has directly filed a complaint before the commission on 28/05/2012 praying that the PIO be directed to furnish the said information.
7. The Commission on perusal of the material on record and the argument advanced by the learned advocate finds that there was no justifiable reason for the PIO to refuse information. If the said file was not traceable the PIO could have done a diligent search and in the meanwhile atleast sent a reply to the Complainant stating the efforts are being made to furnish the said information and could have sought some extension of time and which has not been done.

8. The Commission observes that no doubt the Complainant has come directly in a complaint without exhausting his remedy of filing a First Appeal, however the Respondent has been negligible firstly in not replying to the RTI application and secondly in dereliction of duty by not even putting up an appearance before the Commission despite advance notice which is totally unwarranted and uncalled for.
9. The Complainant is accordingly allowed. The PIO shall furnish to the Complainant the information as sought by him as per the RTI application dated 02/04/2012, free of cost within 30 days from the date of this order. The Respondent PIO should file a compliance report before the commission after the said information has been furnished to the Complainant within 15 days thereafter.

With these observations the complaint case stands disposed.

All proceedings in Appeal case also stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd-

(Juino De Souza)
State Information Commissioner

