

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

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Appeal No.82/SCIC/2017

Mr. Suraj Borkar,
H.No.705, SBI Colony,
Alto Torda, Porvorim,
Bardez-Goa.

..... Appellant

V/s

- 1) The Public Information Officer,
Village Panchayat of Agonda,
Agonda, Canacona –Goa.
- 2) The First Appellate Authority,
Block Development Officer,
Canacona –Goa.

..... Respondents

Filed on :21/6/2017

Disposed on:08/12/2017

1) FACTS:

a) The appellant herein by his application, dated 17/2/2017, filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1,Public Information Officer(**PIO**) under several points therein.

b) The said application was replied on 21/3/2017 informing that the said information is not available in the office records. However according to appellant the information as sought was not furnished and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority(**FAA**).

c) The FAA by order, dated 2/6/2017 dismissed the said appeal.

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d)The appellant has therefore landed before this commission in this second appeal u/s 19(3) of the act.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 11/10/2017 filed a reply to the appeal. The PIO also filed his written submissions through his advocate.

e) In the course of the arguments on 6/11/2017, the PIO again submitted that the information as was sought is not found in the file of the office and that such non availability can be physically and personally checked by the appellant. He further submitted that the appellant can go through the records and identify if the information is available and that such information can be issued. Both the parties therefore agreed that the records can be inspected and 15/11/2017 was fixed as a date for inspection. Adv Mangeshkar for the appellant also agreed to be personally present for such inspection.

f) On the subsequent date of hearing Adv. Mangeshkar submitted that as, agreed the records of office was inspected and on scrutiny, the same was not found. According to him the records might not have been generated. Hence the PIO was directed to file on record an affidavit giving reason as to why the said records are not available.

On 5/12/2017, the PIO filed an affidavit affirming that the such records are not available as no such records are generated. Copy of the said affidavit was furnished to the advocate for the appellant.

2. FINDINGS:

a) I have perused the records and considered the submissions of the parties. In the present case the

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information has not been furnished due to non availability of the same. As per the affidavit the non availability is due to non generation of such information.

b) The Hon'ble Apex Court in the case of **Central Board of Secondary Education & another V/s Aditya Bandopadhyay** (Civil Appeal no.6454 of 2011) at para 35 has observed :

“35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of ‘information’ and ‘right to information’ under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”

c) In the light of the above ratio of the Hon'ble Apex court, as the information is not at all in existence due to non generation, nothing can be ordered to be furnished to the seeker. Hence the application u/s 6(1) becomes non-dispensable. The appeal therefore is redundant as nothing can be ordered. The appeal is therefore required to be closed.

In the above circumstances I dispose this appeal with the following:

O R D E R

The appeal is dismissed being redundant. However the rights of the appellant to seek the information, as and when generated, are kept open. Notify the order to the parties.

Proceedings closed.

The file of First Appeal, submitted by FAA be returned to the First Appellate Authority.

Pronounced in the open proceedings.

Sd/-
(Mr. Prashant S. P. Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa