

letter, dated 11/7/2009 issued by the Sarpanch for site inspection, reply, dated 20/7/2009 from PIO as also the reply, dated 21/7/2009. The appellant also has filed on record the proceedings pertaining to the first appeal filed by him and the letter, dated 30/12/2011.

4. In his chief the grievance of the appellant in para (4) is that though the PIO visited the site he did not carry the site inspection. It is further according to appellant that the PIO has replied that the daughter of the appellant did not allow to conduct the inspection.
5. Appellant has further deposed that on 20/5/2011, he made complaint against one Premavati regarding illegal construction undertaken by her and in reply dated 30/12/2011, he was informed by PIO that panchayat has decided to hold site inspection however no inspection is undertaken till date. The grievance of the appellant is that the sarpanch and his wife are undertaking illegal construction and not giving information. It is the contention of appellant in affidavit that the PIO is acting under the influence of panch members and denying information to him.
6. In his cross examination the appellant has admitted that the correspondence viz. complaint, dated 20/5/2011 are filed subsequent to the passing of the order by this commission in this appeal. Regarding the discrepancy in the dates of inspection, the appellant has stated that the inspection was fixed on 14/7/09 and not on 16/7/09. In answer to a question the appellant states that the inspection team has taken measurements of illegalities in encroachment and noted in the report and hence he says that report is not correctly prepared. According to appellant he wanted the panchanama, sketch, photographs etc. In a reply to the question that in the report at exhibit X it is mentioned that the team had to return without carrying out inspection, appellant has stated that the said statement in report is not correct.
7. On 21/1/2016, the then PIO filed an application for dropping the proceedings against him in view of the fact that he has retired. The said application is objected by the appellant by his reply, dated 29/11/2016.

8. Considering the nature of the controversy involved in this proceedings the issue that arises for our consideration is:

"Whether the information as was provided by the PIO was incorrect Information?"

9. Section 2(f) of the act defines information as:

*"2(f) "information" means any , material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material **held** in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in for"*

Section 2(j) of the act gives the extent of right to the seeker as under:

"2(j) right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:

- i. inspection of work, documents, records;*
- ii. taking notices, extracts or certified copies of documents or records;*
- iii. taking certified samples of material;*
- iv. obtaining information in the form of diskettes, floppies, taps, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"*

A conjoint reading of these provisions shows that a seeker can exercise his rights in the form and manner as specified in section 2(j) in respect of the records as specified in section 2(f) which are held by public Authority.

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

"35.-----But where the information

sought is not a part of the records 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.-----”

11. The appellant has relied upon the reply dated 21/07/2009, by which the appellant is informed that inspection could not be carried out as inspection team was not allowed to do by one of his family member as such no inspection was carried out. As per reply of PIO it is his contention that the inspection report, which was in fact a report mentioning as to what transpired at the site when team visited the site was issued.
12. In the affidavit in evidence the appellant has averred that when PIO visited the site he did not carry out any inspection and that when information was sought under RTI, PIO had replied that appellants daughter had obstructed inspection. In para (9) of his affidavit appellant affirms that no inspection has taken place till date. In the cross examination also he stated that measurements were taken but were not noted in report. Hence according to him report was not recorded correctly.
13. On going through the records, more particularly the plea of appellant, there is nothing on record to show that the report of the site inspection, exist in any form, other than the one dated 14/07/2009 and attached to the appeal memo. The appellant in his cross examination states that he does not have any document to show that any inspection report was in fact prepared.
14. The Hon'ble High Court of Bombay, Goa bench at Panaji, while dealing with a case of penalty (Writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others) has observed:

“11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate.”

In view of the above ratio no penalty can be imposed unless the commission concludes that the failure of PIO in supplying information was deliberate and willful.

15. Considering the rulings of the Hon'ble Apex court as also by the Hon'ble High Court of Bombay, as above, we do not find any convincing and cogent evidence to hold that the report of inspection in any form other than the one, dated 14/7/2009 and furnished to the appellant exist with the panchayat. Hence we hold that the information as is held by panchayat is furnished in the same form as it exist.

16. In view of the above fact the objection raised by the then PIO to drop the proceedings in view of his retirement, is not required to be answered.

In the circumstances the show cause notice is required to be with drawn, which we accordingly do. The proceedings are dropped.

Pronounced in the open proceedings.

Parties to be intimated.

The proceedings therefore stands closed.

Notify the parties.

Sd/-

(Mr. Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa

Sd/-

(Ms. Pratima K. Vernekar)
State Information Commissioner
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