

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

Appeal No. 269/2018/SIC-I

Sushant Nagvenkar
H. No. C-312, Fondvem,
Ribandar-Goa 403 006

....Appellant

V/S

1. The Public Information Officer/
Asst. Engineer, Div-I, Electricity Department,
Vidyut Bhavan, Panaji-Goa
2. The First Appellate Authority,
Superintending Engineer, Electricity Department,
Vidyut Bhavan, Panaji-Goa

.....Respondents

CORAM:

Ms. Pratima K. Vernekar, State Information Commissioner

Filed on:15 /11/2018

Decided on:28/03/2019

Order

1. The second appeal came to be filed by the appellant Shri Sushant Nagvenkar on 15/11/2018 against Respondent No. 1 Public Information Officer (PIO), of the office of Asst. Engineer, Division I, Electricity Dept at Panaji and as against the Respondent No. 2 First Appellate Authority (FAA) under section 3 of section 19 of Right to Information Act 2005.
2. The brief facts leading to the second appeal are that the appellant vide his application dated 24/07/2018 had sought for the inspection of the file of processing of his complaint/ grievance dated 6/04/2018 and subsequence various communications made by him

with the public authority in connection with the above subject. He also sought the certified copy of the documents from the above file post inspection as and if desired by him. Vide said application the appellant also intended to know the existence of time bound public grievance redressal mechanism within the public authority and also sought for certified copy of the document laying the modalities of the process. The said information was sought by the appellant from the Respondent No. 1 PIO of the Electricity Division-I (O & M) in exercise of his right under subsection (1) of section 6 of RTI Act, 2005.

3. It is a contention of the appellant that the Respondent No. 1 PIO. vide letter dated 26/7/18 transferred the part request at serial no. 3 to the PIO of Office of Executive Engineer (RTI), Panaji with the request to provide said information directly to the appellant.
4. It is the contention of the appellant that also he received letter dated 16/08/2018 from the Respondent No. 1 PIO requesting him to visit their office for the purpose of carrying out the inspection of documents. And accordingly he visited the office of the Respondent No. 1 however, some Xerox copy of documents were put for his inspection hence he requested the Respondent PIO to give him complete file in original including his communications along his noting sheets, etc.
5. It is a contention of the appellant that he visited office of the respondent on numerous occasions, however, the Respondent No. 1 PIO was not able to show the complete file for inspection and also was not able to provide copy of the grievance redressal scheme, as such he being aggrieved by the action of Respondent PIO filed First Appeal on 25/9/2018 before the Respondent No. 2 First Appellate Authority (FAA) interms of section 19 (1) of RTI act 2005.

6. It is the contention of the appellant that Respondent No. 2 FAA disposed his First Appeal vide judgment order dated 05/10/2018 without any directions for furnishing of the information.
7. It is the contention of the appellant that he had filed complaint dated 06/04/2018 before the Superintended Engineer of the Electricity Department regarding abuse powers by departmental officers in complicity with customer resulting in undue monetary advantage to the delinquent customer and despite of his visits to the department to know the progress on his complaint/ grievance and the action taken on it, since no information was provided by the authority he by invoking the RTI Act sought the said information vide his application dated 24/07/2018.
8. It is the contention of the appellant that Respondent No. 1 and the Respondent No. 2, in collusion are deliberately not providing the relevant files for inspections since the issue involved was serious and was extending undue monetary advantage at the cost of public exchequer.
9. It is the contention of the appellant that he being aggrieved by the action of both the respondents, is forced to approach this Commission on 15/11/2018 in the second appeal as contemplated under section 19 (3) of RTI Act 2005.
10. In the present appeal the appellant has prayed for directions to the Respondent No. 1 Public Information Officer (PIO) for providing him the information as sought by him and for invoking penal provisions.
11. The matter was listed on the board and was taken up for hearing. In pursuance to notice of this commission, appellant was present in person. Respondent PIO Shri C.H. Raju Gopalan was present along

with Shri Edwin Miranda. Respondent No. 2 FAA was responded by Shri Malappa Hullalada.

12. Affidavit was filed by PIO on 23/01/2019 and on 06/03/2019 along with enclosures and by respondent no. 2 on 14/12/2018. The copies of the above replies were furnished to the appellant.

13. Counter affidavit was also filed by the appellant here in on 05/02/2019 and the copies of the same were furnished to the respondent.

14. It is a contention of the appellant that the Public Grievance Redressal Scheme cannot be in the custody of single person or in an individual section but has to be available with all sections/offices/ departments of the public authority and therefore the action on the part of Respondent No. 1 on transferring his application with regards to point No. 3 to PIO of Executive Engineer of (RTI) was uncalled for.

15. Vide reply dated 28/03/2019, PIO contended that the information pertaining to Public Grievance Redressal Scheme is not in his custody nor is available in the office records and as such he was unable to provide the same to the appellant and as such he transferred point no. 3 of the said application to PIO of Executive Engineer of (RTI). It was further contended that he after seeking the assistance from PIO of Asst Engineer (COM) sub-div-II, inspection of the documents and the copies of the same were provided to the appellant.

16. It was further contended by the Respondent No. 1 PIO that during the hearing before FAA it was revealed that the part of the information in custody of PIO Executive Engineer (RTI) and hence upon receiving of the order of the FAA, the respondent PIO vide his letter dated 16/10/2018 transferred the application of the appellant

with regard to point no. 2 to the Executive Engineer (RTI) who was the custodian of the said information. He further contended that a reminder was also sent on 19/03/19 to the PIO of Executive Engineer (RTI).

17. It was also further contended by PIO that he had again issued letter dated 11/01/2019 to the Executive Engineer (COM) with request to provide the information and the information which was received from him on 14/01/2019 was forwarded to the appellant. In support of his above contentions he relied upon the correspondent exchanged between him and other office colleagues.

18. In the nutshell it is the case of the PIO that available information and the inspection of the documents was given to the appellant and the information pertaining to the processing of his numerous letters addressed to Chief Electrical Engineer, Panaji, Superintending Engineer, Circle II (North), Panaji, since was in the custody of the Office Chief Electrical Engineer, point no. 3 and 2 was transferred by him to PIO of the Executive Engineer (RTI) on 26/07/2018 and on 16/10/2018 respectively.

19. I have scrutinised the record available in the file and also considered the submissions of both the parties.

20. In the contest of nature of information that can be sought from PIO, the Hon'ble Supreme Court in civil appeal no. 6454 on 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya has held at para 35

"At this juncture, it is necessary to clear some misconception about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from the combined reading of section 3 and the definition of "information "and "right to information "under clause (f) and (j) of section 2 of the Act. **If the 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”.

21. Yet in another decision in letters appeal no. 1270 of 2009 in civil writ jurisdiction case no. 11913/2009, reported in AIR 2012 Patna; Shekarchandra Verma vs State Information Commissioner Bihar has held

“in our view, the RTI Act contemplates furnishing of information which is available on record, but it does not go so far as to require an authority to first carry out an inquiry and collect, collate information and then to make it available to applicant.”

22. Hence, according to ratio laid down in above judgements, the PIO can only furnish information as exists and as available on their records. In the present case since the respondent no. 1 PIO have category submitted that information at point no. 2 and 3 as sought by the appellant is not available in their office records, no directions can be issued to them for purpose of furnishing the same. So also no any directions can be issued to the PIO of the Office of Executive Engineer (RTI) Panaji, he being not a party to the present proceedings.

23. The facts of the present proceedings doesn't warrant the levy of penalty on the PIO as the application was responded within 30 days time there by offering him inspection, so also point no. 3 was promptly transferred to the other PIO who was holding the said information. Time and again the bonafides have been shown by the PIO in furnishing the information and there was no denial from his side.

24. In view of above discussions, the reliefs sought by the appellant as against Respondent No. 1 PIO cannot be granted.

25. Appeal disposed accordingly and proceedings stands closed.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Pronounced in the open court.

Sd/-

(Ms. Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panjim-Goa