

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No.119/SCIC/2017

Mrs. Swarada Sardessai,
R/o 407, Prudential Petunia,
Housing Board Area,
Gogoi, Margao –Goa.

..... Appellant

V/s

The State Information Officer,
The Executive Engineer, W.D. VI,
Public Works Department,
Having its office at Fatorda,
Margao-Goa.

..... Respondent

Filed on: 08/08/2017

Disposed on: 04/03/2018

1) FACTS:

a) The appellant herein by her application, dated 20/10/2016 filed u/s 6(1) of The Right to Information Act 2005(Act) sought certain information from the Respondent No.1, PIO under several points therein.

b) The said application was not responded to by the PIO within time and as such deeming the same as refusal appellant filed first appeal to the First Appellate Authority (FAA) on 05/04/2017.

c) The FAA by order, dated 09/05/2017, allowed the said appeal and directed PIO to furnish specific point wise information, within 10 days of receipt of the order.

d) In spite of said order the PIO failed to furnish information. The appellant has therefore landed before this commission in this second appeal u/s 19(3) of the act and the grounds as specified in the memo of appeal.

Sd/-

...2/-

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 12/10/2017 filed reply to the appeal. Subsequently on 27/11/2017 the PIO filed further reply and arguments attaching thereto the information's as was furnished vide letter dated 04/5/2017 as per directions of the FAA.

f) On perusal of the said information more particularly the chart attached to the reply dated 04/05/2017, it was seen that in respect to information as was furnished in respect of eight works, several aspects were not furnished as was not available/traceable. Such non available information was shown in the respective columns in the said chart against the respective work. It was therefore felt that evidence on such non availability/traceability should be obtained on affidavit. The PIO was directed to file affidavit in exercise of powers conferred under rule 5(i) of the GSIC (Appeal Procedure) rules 2006.

g) Accordingly on 27/04/2018, then PIO Shri Ratnakaran Challan filed his affidavit affirming the said non furnishing of information, due to non availability /traceability of file.

h) Parties filed their written submissions. Oral submissions of the appellant were also heard.

2) FINDINGS:

a) Perused the records and considered the submissions of the parties. The information sought pertains to various aspects of eight works which were undertaken for the public authority.

Sd/-

...3/-

Said information pertained to aspects like copies of work orders, extension of time limits, measurement books running account bills and final bills, security amount submitted including documents, extra items excess savings, deviation, substituted items statement copies. As per the reply dated 04/05/2017, and the chart attached to said reply, information to some of the aspects as shown in some column are stated at be “not available/traceable.

b) On going through the affidavit of the then PIO Shri Chalaan it is seen that the information at said points is not available/traceable. There is no evidence brought on record to controvert the said affidavit. In these circumstances, in the absence of an contradictory affidavit, I hold that the information, which is stated to be not available/ traceable is in fact not existing now.

c) The ratio as laid down by Hon’ble Supreme Court in the case of Central Board of Secondary Education V/s Aditya Bandopadhyay relevant portion reads:

“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

Sd/-

...4/-

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 no 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 of assumptions.”

d) Applying the above ratio and considering the above circumstances, I hold that the information, as is available is furnished and the remaining part cannot be ordered to be furnished being not available. Hence nothing survives in the present appeal. Hence the appeal stands disposed with the following:

O R D E R

The appeal is disposed accordingly. However this order shall not effect the right of the appellant to initiate any proceedings under the law in case it is found at any time later that the said affidavit, dated 27/04/2018, was false.

Notify the parties.

Proceeding closed.

Pronounced in open hearing.

Sd/-

(Shri. P. S.P. Tendolkar)

Chief Information Commissioner
Goa State Information Commission
Panaji –Goa