

GOA STATE INFORMATION COMMISSION

AT PANAJI

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Appeal No.83-SIC-2011

Shri Vishnu Kashiram Haldankar,
61 years of age,
S/o Late Kashiram Haldankar,
Agriculturist,
R/o H.no.887, Mazal Waddo,
Anjuna, Bardez-Goa

...Appellant

V/s

S.P.I.O/ Executive Engineer,
Electricity Department
Vidyut Bhavan, Division XVII,
Ansabhat, Mapusa-Goa

...Respondent

Appellant in person along with his Adv. S.Kalangutkar
Respondent present along with his representative Shri Kshinath Shetye

JUDGEMENT

(16-09-2011)

1. The Appellant, Shri Vishnu Kashinath Haldankar, has filed the present appeal praying that the impugned order be quashed and set aside and present appeal be allowed thereby directing the Respondent to furnish the requisite information within the time stipulated under the Act, that the Respondent be ordered to prepare the inspection report if not yet prepared and be directed to furnish the copy of the same to the Respondent forthwith and that the Respondent be penalized as per section 20 of the Act.

2. The brief facts leading to the present appeal are as under:

That the Appellant, vide application dated 22/07/2010, addressed to the P.I.O. Village Panchayat of Anjuna sought certain information under Right to Information Act 2005 (R.T.I. Act for short) regarding the inspection memo of the joint site inspection held by the officials of Village Panchayat of Anjuna and officials of the Respondent. That the office of Village Panchayat of Anjuna vide letter dated 17/09/2010 has informed the appellant that the joint site inspection report has not been received from the Respondent. The

Appellant, therefore, vide application dated 11/11/2010 sought the information under R.T.I. Act to furnish the certified copy of the inspection memo of the joint site inspection held on 4/3/2010 as per letter dated 25/02/2010 addressed by Village Panchayat of Anjuna to the Respondent. That the Respondent by reply dated 8/12/2010 informed that the information sought is not available in the office of the Respondent and hence certified copy could not be issued. Being not satisfied the Appellant preferred an appeal before the First Appellate Authority (F.A.A.). BY order dated 19/01/2011, the F.A.A. observed that P.I.O. has to confirm that the inspection report desired by the Appellant was drafted or not and if the same was drafted should be made available to the Appellant and that P.I.O. should clarify/furnish information to the Appellant within seven days. That by letter dated 28/01/2011 the respondent furnished information stating that no inspection report was made. It is the case of the Appellant that joint inspection was carried and in terms of law the Respondent has to prepare the report. Since information is not furnished and being aggrieved the Appellant has preferred the present Appeal.

3. The Respondent resists the Appeal and the reply is on record. It is the case of the Respondent that the Electricity Department had released one electricity connection in the name of Suryakant Panduranga Haldankar. That joint inspection was fixed, however, report was not drafted hence the inspection report was not sent to the village Panchayat Anjuna. Hence the information sought was not available.

4. Heard Adv. S. Kalangutkar for Appellant and Shri Kashinath Shetye representative of Respondent.

5. I have carefully gone through the records of the case and also considered the arguments of the parties. The point that arises for my consideration is whether relief prayed is to be granted or not.

It is seen that by letter dated 11/11/2010, the Appellant sought certain information i.e certified copy of the inspection memo of the joint site inspection in respect of a certain house as mentioned in the application. By reply dated 8/12/2010 the Respondent replies and /or furnished the information that the said inspection memo is not available and hence copy cannot be furnished. Being not satisfied the Appellant preferred an appeal before the First Appellant Authority. By order dated 19/1/2011 the F.A.A. observed as under:

“.....
the State Public Information officer has to confirm that the Inspection report desired by the Appellant was drafted or not. If the same was drafted, the same should be made available to the Appellant. The State public Information officer should clarify/ furnish information to the Appellant within seven days from this date.”

By letter dated 28/01/2011, the Respondent sent the reply/furnished the information stating that no inspection report was made .

During the course of the arguments Shri Shetye representative of the Respondent states that joint inspection was done but no inspection report was made. In short the information sought is not available.

6. No doubt inspection was done but no report was made and as such information sought is not available with the public Authority. If the contention that information cannot be furnished as the same is not traceable/available is accepted then it would be impossible to implement R.T.I. Act. However, it is also a fact that information that is not available cannot be furnished No doubt records are to be well maintained. Nonetheless fact remains that the information sought is not available with the public Authority and hence no obligation on the part of P.I.O. to disclose the same as the same cannot be furnished .

It is to be noted that since information requested is not maintained by the officers of the Public Authority in regular course of business it did not qualify to be an information held by the Public Authority in terms of section 2(j) of the R.T.I. Act.

The rule of law now crystallized by the various rulings of C.I.C. is that information /document that is not available cannot be furnished. The Right to information Act can be invoked only for access to permissible information.

7. Adv. for the Appellant states that the said report should be there. In any case the Appellant can take inspection only to ascertain about the same. The Respondent to give inspection of the concerned record to the Appellant.

8. Regarding aspect of delay. The reply is furnished in time. So there is no question of delay as such.

9. In view of all the above, since the information is not available the same cannot be furnished. Hence I pass the following order:

ORDER

The Appeal is partly allowed. Since information is not available the same cannot be disposed.

The Respondent to give inspection of the concerned records to the Appellant on a mutually agreed date within 15 days from the date of receipt of the orders.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 16th day of September, 2011

Sd/-
(M.S. Keny)
State Chief Information Commissioner