

information with regard to question No.2, however, with regard to other question the opponent stated that “information is not available.”. That the complainant then by letter dated 19/1/2011 asked for clarification with regard to “information is not available” mean. That in reply the opponent by reply dated 21/2/2011 stated that “the information sought by you is informed to be not available at all in the record”. That since the information was not furnished the complainant filed appeal before the First Appellate Authority. That the First Appellate Authority by order dated 6/4/2011 directed the opponent to issue the entire information to the complainant within a period of 15 days. However, the information was not furnished. Being aggrieved the complainant has filed the present complaint.

3. The opponent has filed the reply and also additional reply which are on record. It is the case of the opponent that the complaint is misconceived and bad in law. That the purported complaint filed by the complainant is a gross abuse and misuse of R.T.I. Act. That the information sought by the complainant does not come within the definition “information” and is not one which is a matter of records of the opponent and/or required to be or which can be furnished by the opponent. That there is no refusal of any information available with the opponent. That the opponent provided and furnished the information available and wherever the opponent has found the information was not specific opportunity was given to the complainant to specify and prioritize the information, which should be furnished to him as per the provisions of the Act. That based on the application of the complainant, the opponent forwarded a letter dated 20/9/2010 alongwith copy of R.T.I. application to the respective departments requesting to forward the information to the opponent as sought by the complainant in his application dated 17/9/2010. That in reply to the letter dated 20/9/2010 of the opponent, the concerned department replied and gave the information whatever available with their departments. That the opponent accordingly replied to the R.T.I. application of the complainant by letter dated 8/10/2010

asking him to collect the information within 7 days on receipt on payment of Rs.4/- only. That the opponent also annexed the replies sent to the concerned departments for the information of the complainant. That the complainant wrote letter dated 19/1/2011 and the same was replied by letter dated 21/2/2011. In short according to opponent all the available information has been furnished. That the complainant filed an appeal and by order dated 6/4/2011 asked the opponent to furnish the information. That the complainant thereafter filed the present complaint. The opponent denies the case of the complainant as set out in the complaint.

4. Heard the arguments. The learned Adv. Shri J. Fernandes argued on behalf of the complainant and the learned Adv. Shri P. Agrawal argued on behalf of opponent.

According to the advocate for complainant full information is not furnished. He referred in detail the facts of the case as well as order of the F.A.A. Written submission of the complainant is on record.

During the course of his arguments the advocate for the opponent submitted that whatever available information is furnished.

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

It is seen that by application dated 17/9/2010 the complainant sought certain information. The information consisted of 2 points i.e. point at Sr. No.1(a), (b), (c), (d), (e) and (f) and point at Sr. No.2(a), (b), (c), (d) and (e). By letter dated 6/10/2010 the information was furnished in respect of point at Sr.2(a), (b), (c), (d)

and (e). The complainant admits that he has received information in respect of point No.2

The only grievance of the complainant is that no information is furnished in respect of point No.1. He next submitted that in spite of order of F.A.A. the information is not furnished.

Now it is to be seen whether the information in respect of point No.1 is furnished or not. The opponent has produced certain documents along with the reply. There is a letter dated 8/10/2010 addressed to the complainant. By this letter the complainant is requested to collect the information within seven days on payment of Rs. Four only. The letter further mentioned as under :-

“Further we are enclosing following xerox copies for your information.

1. No.KTC/Adm/1-2/2010. 11/79 dated 23/9/2010
2. No.K.T.C./LA/4-1/2010. 11/223 dated 28/9/2010
3. No.K.T.C./TRF/129 A/2010. 11/918 dated 24/9/2010.

The complainant received the same on 12/10/2010 and there is endorsement of the complainant in token of having received the same on the said letter. The above mentioned notes speak of information.

Another letter dated 21/2/2011 is in receipt of clarification dated 19/1/2011. In this letter there is a clear mention that “the question No.1 in your application dt.17/9/2010 the same has been already answered to you vide letter No.KTC/PIO/166(290)/10-11 dated 8/10/2010 by enclosing a copy of letter No.KTC/TRF/129 A/10-11/918 dated 24/9/2010 complied by Dy. General Manager (TRF). This has not been denied.

From the records it appears that information to both the points has been furnished and that too in time.

6. Another contention of the appellant is about information being “not available”. It is to be noted here that under R.T.I. the document which is not available cannot be furnished. If the information is not available there is no obligation on the part of P.I.O. to disclose the same.

I have perused some of the rulings of Central Information Commission.

- (i) *In Shri B.S. Rajput V/s. Council of Scientific & Industrial Research (CSIR) (F.No.CIC/AT/A 2008/00464 dated 15/09/2008) where respondent pointed out that all the information barring one information (corresponding to Appellant’s request dated 13.06.2007) had been provided, the Commission held that it has no reason to disbelieve the categorical assertion of respondent and the document in question missing is more than 20 years old. Thus document being untraceable cannot be physically disclosed and resultantly there is no disclosure obligation on the respondent.*
- (ii) *In Shri V.P. Goel V/s. Income Tax Department (F. No.CIC/AT/A/2008/00455 dated 10/09/2008) where the Appellate Authority held that since the information requested is not maintained by the officers of 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 Commission observed that it is not possible to overrule the order of Appellant Authority who has very correctly decided that information which is not maintained or held by the Public Authority cannot be disclosed.*

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

7. Regarding delay. Considering the date of application and reply filed there is no delay as such.

8. In view of all the above, since information is furnished, no intervention of this Commission is required. Hence I pass the following order.

ORDER

No intervention of this Commission is required as information is furnished. The complaint is disposed off.

The complaint is accordingly disposed off.

Pronounced in the Commission on this 31st day of May, 2012.

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