

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 13/SIC/2010

Mr. Francisco D'Sa,
H. No. 116, Pirazona,
Moirá, Bardez,
Goa

.... Appellant

V/s.

1) Shri U. S. Kerkar,
State Public Information Officer,
Executive Engineer, Div. VI,
Electricity Department,
Mapusa - Goa

... Respondent No.1.

2) Shri S. T. Bhangui,
First Appellate Authority,
Superintending Engineer-II (N),
Government of Goa, Electricity Department,
Vidyut Bhavan, 2nd Floor,
Panaji - Goa

... Respondent No. 2.

Appellant absent.

Adv. Smt. N. Narvekar for Respondent No. 1.

J U D G M E N T
(08.06.2012)

1. The Appellant, Shri Francisco D'Sa, has filed the present appeal praying that the Respondent No.1 be directed to furnish correct and complete information sought by the Appellant immediately; that exemplary action be initiated against the Respondent No. 1 including imposition of penalty/fine; that the Appellant be compensated to the tune of Rs. 2000/- for the harassment and delay in receiving information and that the costs of Appeal be granted.

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

That the Appellant, vide an application dated 24.09.2009, sought certain information, under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer ('P.I.O.)/Respondent No. 1. That on 24.01.2009, the Appellant received a letter dated 22.10.2009 by

which the S.P.I.O./Respondent No.1 informed the Appellant to collect the information upon payment of Rs.6/-. That on 26.10.2009 the Appellant collected the information. That being not satisfied with the information provided the Appellant preferred an Appeal with the First Appellate Authority/Respondent No. 2. That by order dated 17.11.2009 directed to furnish the information within 10 days. That accordingly on 26.11.2009 when the Appellant went to the Office of Respondent No. 1 the Appellant was issued a letter dated 26.11.2009 wherein it is stated that information is as per the order of F.A.A. That the information provided is not correct and complete. Reasons for not being satisfied are mentioned. Being aggrieved the Appellant has filed the present Appeal.

3. The Respondent No.1 resists the Appeal and the reply of the Respondent No. 1 is on record. In short it is the case of the Respondent No. 1 that Appellant made an application dated 23.09.2009. That the P.I.O. replies vide letter dated 22.10.2009 within the stipulated time giving the full information available with him. That the Appellant preferred an appeal before the First Appellate Authority who passed the order saying that the information available with the S.P.I.O. may be furnished on the Appellant within 10 days of the order. That the order of the F.A.A. was fully complied with. It is the case of the Respondent No.1 that some of the information which has been asked does not come under the ambit of the information as per Section 2(f), (i) and (j) of the R.T.I. Act. Still he has tried to give his maximum as he believes in informed citizenry and transparency of information. That in the application the Appellant has raised certain issues which are in the nature of questioning the validity or vires of decision of the Authority. That in the name of information no one can claim answers/decisions to the questions. That in the name of the information the Appellant is questioning the decision of the Public Authority which he cannot do. He also relied on some judgments.

The Respondent No 2 has filed the reply which is on record. It is the case of Respondent No. 2 that Appellant has filed the Appeal and the same was disposed after hearing the parties. According to him the Appellant cannot be aggrieved by the said order.

4. Heard Adv. Smt. N. Narveker for Respondent No. 1. Appellant was absent, however, Written Synopsis of Arguments are on record.

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

It is seen that vide application dated 23.09.2009 the Appellant sought certain information consisting of certain points i.e. Sr. No. I to VII with sub-points. By reply dated 22.10.2009 the P.I.O./Respondent No.1 requesting to pay Rs.6/- as fees towards 3 page documents and collect the same from their office. The Appellant accordingly collected the same. Being not satisfied the Appellant preferred an appeal before the First Appellate Authority/F.A.A. The First Appellate Authority passed the order on 17.11.2009. It was observed as under:-

“This authority is of the opinion that the information available with the State Public Information Officer that can be furnished under the provision of Right to Information Act 2005 should be furnished.

The State Public Information Officer is hereby directed to furnish information desired by the applicant and which is available with him within 10 days free of cost.”

The main grievance of the Appellant is that the information furnished is incorrect and incomplete.

6. It would not be out of place to mention here about the definition of information. Under Section 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 force.

Section 2(i) “record” includes –

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;

- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device;

It is to be noted here that the term “record” for the purpose has been defined widely to include any documents, manuscript, file, etc.

Under clause 2(j) “The Right to Information” means the right to information accessible under this Act which is held by or under control of any public authority and the powers under the Act include the right to:-

- (a) inspect works, documents, records of any Public Authority;
- (b) take notes, extracts or certified copies of documents or records;
- (c) take certified samples of material and
- (d) obtain information of printouts, diskettes, folders, tapes, video cassettes or any other electronic mode or through printouts where such information is stored in a computer or in any other device.

A combined reading of Section 2(f), 2(i) and 2(j) of the R.T.I. Act would show that a citizen is entitled for disclosure of information which is in a material form with the public Authority that is the information is available in any file or document and the like and the information and the right to seek do not include opinions, explanations, etc.

It is pertinent to note that Public Information Officer not required to collect, compile or create information for the information seeker but he is expected to provide the information available in material form.

It is held (as decided by CIC in *K. Anand Kini v/s. Canara Bank* on 10.05.2007) that no queries like why, what, how, etc. can be answered by a Public Authority. In the guise of information seeking explanations and queries about nature and quality of action of public authority need not be raised for answer. Again it is held that R.T.I. Act does not cast on the Public Authority any obligation to answer queries in which attempt is made to elicit answers to questions with prefixes such as why, what, when and whether.

In Shri Vibhor Dileep Baria v/s. Central Excise and Custom Nashik (Appeal No. CIC/AT/A/2006/20588 DATED 30.11.2006) it is observed in para 11 and 14 as under:-

“11. Right to Information Act confers on all citizens a right to access information and this right has been defined under Section 2(j) of the said Act. An analysis of this Section would make it clear that the right relates to information that is held on under the control of any public authority. If the public authority does not hold information or the information cannot be accessed by it or under Section 2(f) or if the information is non-existent, the public authority cannot provide the same under the Act. The Act does not make it obligatory on the party of the public authority to create information for the purpose of its dissemination.”

“14. Thus information would mean any material in existence and apparently it cannot mean and include something that is not in existence or to be created.

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..... On the same analogy, answering a question preferring advice or making suggestions to an applicant is clearly beyond the purview of Right to Information Act.”

7. In pursuance of the order of F.A.A. information was furnished. According to the Appellant at Sr. No. I and II (whole) the information is contradictory to each other. It is to be noted here that the information furnished with respect of these points is from the personal knowledge of Asst. Engineer. Under R.T.I. information as held by public authority is to be furnished.

It is seen that information as available has been furnished in respect of III and IV, VI (1) and (2).

Regarding VII the Appellant has asked about the opinion of P.I.O. in respect of some other Act. However the Respondent has answered the same.

8. It is to be noted here that as observed hereinabove the information as held by Public Authority is to be furnished. Order of First Appellate Authority also states so. The Appellant states that he has been given

incorrect information. The purpose of R.T.I. Act is to furnish information – information correct to the core. In fact that is the mandate of R.T.I. The Appellant must be satisfied that he has been given correct information. Only with a view to ascertain the same this Commission is inclined to give inspection to the Appellant of the concerned records.

If the Appellant wishes or desires to take inspection he can do so. In case from the records if it is found otherwise then Appellant can certainly move an application and if found incorrect inquiry under Section 18(1) (e) of the R.T.I. Act can be held.

9. In view of the above I pass the following Order:-

ORDER

Appeal is partly allowed. The Respondent No. 1/P.I.O. is hereby directed to give the inspection of records/documents to the Appellant on a mutually agreed date but within 15 days from the receipt of this Order.

Needless to add that if on inspection the Appellant finds that information is incorrect, incomplete, he can certainly move the Commission so as to hold inquiry in terms of Section 18(1)(e) of the R.T.I. Act.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 08th day of June, 2012.

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

