

GOA STATE INFORMATION COMMISSION

Ground Floor, Shrama Shakti Bhavan, Patto Plaza, Panaji-Goa.

CORAM: Smt. Leena Mehendale, State Chief Information Commissioner

Appeal No. 206/SIC/2012

Decided on: 24/04/2014

Shri. T.C. Bhandari,
C/o. Bharat Conductors Pvt. Ltd.,
Plot -41,Phase III-A,
Sancoale Ind. Estate,
Zuarinagar.

.....Appellant.

V/s.

The State Public Information Officer,
Executive Engineer (Trg),
O/o. the Chief Electrical Engineer,
Electricity Department , 3rd Floor,
Vidyut Bhavan, Panaji-Goa.

.....Respondent No.1

2. The First Appellate Authority,
Superintending Engineer-II(N),
Electricity Department , 2rd Floor,
Vidyut Bhavan, Panaji-Goa.

.....Respondent No.2

ORDER (ORAL)

RTI Application dated: - 18/07/2012
PIO reply on: - 17/08/2012
First Appeal Filed on: - 21/09/2012
FAA Order dated: - 10/10/2012
Second Appeal filed on: - 31/12/2012

(1) This second appeal arises out of the RTI application made to PIO and Executive Engineer (Training) in the Office of Chief Electrical Engineer, Vidyut Bhavan, Panaji. On the date of final hearing dated 24/4/2014, following Rojnama was recorded:

“Present PIO & Appellant present. Appellant has received part information & has become stale and irrelevant and not pressed for. Also he wants no action u/s 20 but a detailed direction to Department as regards U-turns and reluctance for allowing inspection”.

(2) In view of the above, it becomes necessary to comment on the working of the Electricity Department which works under control and guidance of the Chief Electrical Engineer, Government of Goa. It is important to mention that PIO is only a Public Officer, who is designated to give information to the citizen on behalf of the department. But the real onus lies on Public Authority. PIO is only the custodian and supplier of the information, but not actually incharge of implementation of the Government Schemes. Most of the times, he has no control over those who are implementing. Hence the role of Public Authority is important.

(3) In the instant case the appellant had submitted application dated 18/7/2012 for supply of certified copies of the following:

1. *“For procurement of Conductors, after expiry of RATE CONTRACT Order on 31st, March, 2012, the Electy. Dept. had moved the matter for Govt. approval on procurement by inviting the OPEN TENDER, Cancellation of the Tender and further action taken for procurement of Conductors after cancellation of the Tender and all relevant documents, file notings of the Govt. of Goa, concerned authorities including the copies of the documents referred in the notings in the matter from 1st April, 2012 to till the date of your reply to me.*

2. *I shall also like to inspect the file and the documents copies, you give me on my this application, to avoid the gap in the understanding and due clarification for speedy disposal of my application”.*

(4) The PIO invited him to inspect file on 1/8/2012. The appellant received this intimation on 6/8/2012. When he approached the PIO on 6/8/2012 he was told that the file was in transit but that the appellant should come back on 21/8/2012. Again he visited PIO's Office on 21/8/2012 and was again told that the file was in transit. The funny part is that the PIO had in the meantime, prepared a reply to the RTI application signed it on 17/8/2012, but this information was not given to appellant when he approached the PIO on 21/8/2012. The reply was posted on 23/8/2012 and received by the appellant on 24/8/2012 in which the PIO had claimed exemption under section 8(1) d and 8 (1) e of the RTI Act 2005.

(5) In the first appeal order dated 10/10/2012, it was directed by the FAA *“Deemed (SPIO), Executive Engineer (Proc.), is directed to provide inspection of the Office copy of the concerned file to the appellant on 10/10/2012 itself.*

He is also directed to provide copies of documents desired by the appellant from the office copy file within a fortnight. The respondent No. 2. The Deemed SPIO should also provide inspection of original case file on receiving the same from the Govt. of Goa, if the appellant so desires even after perusing the Office copy and receiving copies of documents from office copy file”.

(6) It is thus obvious that since the Executive Engineer (Procurement) maintains a copy of the file, the PIO should have procured it from the deemed PIO Executive Engineer procurement and should have provided inspection.

(7) In the second appeal the appellant has vehemently opposed to the claim of exemption taken by the PIO. The PIO reply that “*now it has been observed after going through the file that it contains confidential information/trade secrets of other third parties, the disclosure of which can harm the competitive position of the other parties and the information includes commercial confidence and trade Secrets*” is vehemently opposed.

Section 8(1) (d) and 8(1) (e), state as below:

“Sec. 8(1) (d) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

Sec. 8(1) e information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(8) The appellant also pointed out that *it is the main objective of the RTI that a common man can avail any Govt. document, can inspect any work in progress and can ask questions related to any aspect of the work. **In this way, every Citizen of India can directly participate in the Govt. mechanism and its proceedings.***

It is the mantra of the good governance that there is optimum transparency in the Govt’s works and processes and that anyone should be allowed for easy access to the maximum amount of informations of such PUBLIC TENDERS rather

than mis-applications and taking shelter on wrong interpretation of the RTI ACT & Rules”.

(9) On perusal of documents, I agree with the appellant. The interpretation of section 8(1)(d) and 8(1)(e) was wrongly done by the PIO which is borne out from the fact that the FAA has directed the concerned Executive Engineer incharge of procurement to supply information.

(10) It is also important to comment on the attitude of PIO. Information was asked only for the period 01/04/2012 to 31/08/2012 (only for 5 months), on following points –

- Those pages under which the Electricity Department had moved file for the Govt. Approval.
- The cancellation of earlier tender if any, on account of expiry of rate contract.
- Action taken for procurement of conductors.
- Relevant documents and file notings in the matter for receiving or accepting new tender and finalizing the contract.

(11) Obviously there is absolutely no scope for section 8(1) (d) or 8 (1) (e) and for claiming fiduciary relationship.

It has also been held in several judgment passed earlier by the various Information Commission and High Court, that information contained in public tender cannot be given benefit of exemption under section 8(1) (d) and 8(1) (e).

(12) It is also important to keep in mind that when tenders are called a date is prescribed when all the tenders will be opened in presence of all who have filed the tenders and only one of the tenders is selected and passed for executing the work. Thus tenders are made public on the date of their opening only with the exception, that if the date is postponed or for any other reason, it is decided by the Government not to open the tender documents, but cancel and invite fresh tenders then those unopened tenders should not be opened and should be destroyed in due course of weeding. It appears that these basic principles were properly understood by FAA but not by PIO which has resulted in requiring the appellant to peruse the

matter at different levels after filing application on 18/7/2012 till the date of decision which is nearly 2 years.

(13) The appellant was gracious enough to state that he does not want any action under section 20(1). The department should however ensure more training to its officers, and better quality of replies by PIO as well as better quality of implementation of FAA's order.

(14) Even the behavior of the PIO is casual & careless. He had prepared a reply on 17/8/2012 which was actually dispatched on 23/8/2012 but the same was not disclosed to the appellant when he approached the PIO on 21/8/2012.

(15) With the above detailed observation and after noting that the information was given after FAA order on 9/11/2012, I order this second appeal as closed at the request of Appellant.

Sd/-

(Leena Mehendale)

Goa State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa