

**OFFICE OF THE REGISTRAR GENERAL, GAUHATI HIGH COURT,
MAHATAMA GANDHI ROAD, PANBAZAR, GUWAHATI**

RTI APPEAL NO.-ID NO. 5/17 dated 25.08.2017

APPELLANT :- SRI BISWAJIT DEBNATH, R/O IIT GUWAHATI CAMPUS, A & B TYPE RESIDENCE, GUWAHATI-29

RESPONDENT :- REGISTRAR (JUDICIAL) & PIO, GAUHATI HIGH COURT

DATE OF APPEAL :- 22.08.2017

DATE OF HEARING :- 04.09.2017

DATE OF ORDER :- **14.09.2017**

Factual Background:-

Being aggrieved by the response received from the respondent, within the prescribed period, the appellant Sri Biswajit Debnath, preferred this appeal which is doctated vide Regd. ID No.05/17 dated 25.08.2017

Before a discussion is directed towards the issue in question, a brief reference to the background of this appeal would be advantageous.

The record reveals that the applicant vide his RTI application dated 15.07.2017, had sought for following 2(Two) numbers of information:-

"By virtue of section 2(f) of RTI Act, 2005-

- (i) *Kindly provide the **opinions** whether a citizen/ party in connection with litigation is allowed to send / file fresh-application, interim-application and material evidence before this Hon'ble High Court and its Subordinate Courts by registered/speed post with acknowledgement due.*
- (ii) *Kindly provide the **opinions** whether a party concerned is allowed to avail certified copy of case records without engaging his Lawyer or Public prosecutor."*

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In response, the Registrar (Judicial) & PIO, Gauhati High Court, vide letter No.HC.XXXV-1/2017/165/RTI dated 07.08.2017, had provided the following information to the applicant:-

Reply to query No. 1 & 2 : Legal opinion does not fall within the purview of RTI Act,2005

Nevertheless, please note that the procedure-

- a) For filing of pleadings/evidence in pending litigation is governed by the relevant provisions of Code of Civil Procedure, Criminal procedure Act, both available in the public domain www.supremecourtfindia.nic.in/judges-liberty .
- b) Rules regarding certified copies is available in 'Gauhati High Court Rule Part IV CHAPTER XIII'. Gauhati High Court Rules is available at www.ghconline.gov.in

Ground of Appeal :

The appellant has cited following grounds for appeal:-

In regard to query No. (i) --- the Appellant believes that the learned PIO has not been specific while replying. There is no mention of such clause as ".....Legal opinion does not fall within the purview of RTI Act, 2005...." in the Act. Moreover, the said query is not pertaining to any ongoing litigation. This query is purely general and holistic in nature and thereby explicit reply is expected by the citizens from this Hon'ble High Court. By virtue of the relevant sections of the said Act ---disseminations (on demand or suo-motu) of such information/opinions from this Hon'ble Court will benefit public interest at large.

Finally, the appellant believes that the court procedure or filing procedure of Hon'ble High Court & its Subordinate courts might have redressed the above issue.

Submission:-

While admitting the appeal on 25-08-2017, the date of hearing was fixed on 04-09-2017 and the appellant was duly notified about the date, vide letter No. HCXXXV-9/2017/182/RTI dated 29.08.2017. But the appellant never turned up, instead he made written submission though e-mail/speed post highlighting following points:-

(i) "...However in my contention I would like to rely on the ground mentioned in my appeal petition dated 22/08/2017 and the relevant sub-sections of 4 and section 2(f), section 5(3) of the RTI Act."

He, therefore, prayed for providing above information.

Decision and reasons thereof:-

I have gone through the appeal and the documents enclosed therewith carefully. Also I have gone through the record carefully. It has transpired from the record that the information, so required by the appellant is a type of opinion. Now, it is to be seen whether the PIO is entitled to furnish any opinion under the provision of RTI Act.

Section 2(f) of the RTI Act define information as under:-

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log-books, contracts, reports, papers, samples, models, data materials 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."

Thus, it becomes apparent that opinion is also 'information' which a PIO is required to furnish when asked for.

In the instant case, the PIO has replied to the query No. 1 & 2 as under:-

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"Legal opinion does not fall within the purview of RTI Act, 2005"

The PIO further replied that:- nevertheless, please note that the procedure-

a) For filing of pleadings/evidence in pending litigation is governed by the relevant provisions of Code of Civil Procedure, Criminal procedure Act, both available in the public domain www.supremecourtfindia.nic.in/judges-liberty .

b) Rules regarding certified copies is available in 'Gauhati High Court Rule Part IV CHAPTER XIII'. Gauhati High Court Rules is available at www.ghconline.gov.in

The Appellant's contention is that the learned PIO has not been specific while replying the queries and there is no mention of such clause as "...Legal opinion does not fall within the purview of RTI Act, 2005..." in the Act. It is further contended that the said query is not pertaining to any ongoing litigation and is of purely general and holistic in nature and thereby explicit reply is expected by the citizens from this Hon'ble High Court and the same will benefit public interest at large.

It is true that the information, so asked for by the appellant is not pertaining to ongoing litigation. It is also true that it is of general and holistic nature and surely it will benefit the litigant public. Now, the thing to be seen is whether the PIO is bound to furnish the much sought for opinion to the appellant while the same are available in public domain.

In this context reference may be made to O.M. No. 1/4/2009-1R, dated 5-10-2009 of Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, by which the Department has circulated a Guide on the 'Right to Information Act, 2005. In para No. 10 of Part I of the Guide, it is stated *inter alia*, that only such information can be supplied under the Act which already exists and is held by the public authority or held



under the control of the public authority. The Public Information Officer is not supposed to create information; or to interpret information; or to solve the problems raised by the Applicants; or to furnish replies to hypothetical questions'.

The same issue has been elaborated by the Supreme Court on Right to Information Act, 2005 in **Civil Appeal No. 6454 of 2011**, arising out of **SLP [C] No.7526/2009** in the case of **Central Board of Secondary Education and Another vs. Aditya Bandopadhyay and Others.-**

"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 an analyzed 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 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 non-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 making of assumptions. It is also not required to provide advice or opinion to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in Section 2 (f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provides advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."

Here in this case, the opinion sought for by the appellant is apparently not part of the record of the PIO. The same are already in public domain and the PIO has clarified it in no uncertain terms. The PIO is not supposed to create or collate information or supposed to solve the problems raised by the applicants,


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notwithstanding, it's general and holistic in nature. In view of the above position cleared by the Hon'ble Supreme Court in the judgment referred above, the Act does not cast an obligation upon the PIO, to collect or collate such non-available information and then furnish it to an applicant. Besides, the PIO is also not required to furnish information which require drawing of inferences and making of assumptions and also not required to provide advice or opinion to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant.

In view of the law, so laid by the Hon'ble Supreme Court in the case discussed above, and also in view of the O.M. No. 1/4/2009-1R, dated 5-10-2009 of Department of Personnel & Training, the PIO is also not required to furnish information which require drawing of inferences and making of assumptions and also not required to provide advice or opinion to the appellant. The grounds for appeal, are thus found to be totally baseless.

In the result, the appeal is found to be bereft of merit, and accordingly the same stands dismissed.

Let this order be communicated to the appellant as well as the PIO, Gauhati High Court.


14-09-17
Registrar General
-cum-
Appellate Authority