

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

RTI APPEAL NO.-ID NO. 6/17 dated 28.09.2018

APPELLANT :- SRI Asit Baran Saha
RESPONDENT :- REGISTRAR (JUDICIAL) & PIO, GAUHATI HIGH COURT
DATE OF APPEAL :- 28.09.2018
DATE OF HEARING :- 03.11.2018
DATE OF ORDER :- **03.12.2018**

Factual Background:-

Being aggrieved by the response received from the respondent, within the prescribed period, the appellant, Sri Ashit Baran Saha, preferred this appeal which is doctated vide Regd. ID No.06/18 dated 28.09.2018.

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

The Appellant had submitted a RTI application, dated 24/07/2018 seeking information. The said application was received by this Registry on 02/08/2018 and docketed it vide **ID. No. 142/2018**. The queries made in the said RTI application are as follows:

“Question : Could you please furnish the particular of Information or divert to other authority :-

- 1. Whether Justice, Gauhati High Court can overpower Authority/Board to scrutiny PLANs technically without panel of Senior SERs; nullifying the Specifications specified in Annexure 3 (Title Suit 338/2014); “Assam Notified Urban Areas (other than Guwahati) Building Rules, 2013” – Yes / No. If yes, please furnish that rules in details.**

2. If Assam Govt (T&CP, Assam) & Different IIT's (3) say "NO" what makes High Court , Guwahati to say "Yes" i.e. Chairman can scrutiny plans technically without proper technical persons."

Along with the RTI application, the applicant had enclosed a copy of Gauhati High Court Order (dated 23/05/2018) passed in **Case No. : RSA 113/2018.**

The PIO, vide letter No. HC.XXXV. 1/2018/201/RTI dated 01/09/2018, replied the said RTI applications as under:

"Reply to Query No.1 and 2: Rendering opinion, interpretation etc., does not fall under the purview of RTI Act, 2005."

Being dissatisfied with the reply received from the PIO, in respect of his RTI application under reference, the appellant has preferred this Appeal enclosing therewith copies of his two earlier RTI applications and their reply by the PIO, viz, **ID No. : 14/2018** dated 25/01/2018 (replied vide letter No. HC.XXXV. 1/2018/18/RTI dated 29/01/2018 and **ID. No. : 58/2018** dated 22.03.2018 (replied vide letter No. HC.XXXV. 1/2018/18/RTI dated 29/01/2018. In his two earlier RTI applications, the applicant had sought identical information as sought in the RTI application for which this appeal is made.

Ground of Appeal :

The appellant has not cited any precise reason for filing this appeal but, after going through the application, it is understood that the appellant is aggrieved by the response received from the PIO. He has stated in his appeal petition that:-

"RTI Application dated 24/07/2018 seeks information not rendering opinion, interpretation etc, rather seeks information about existence of rules/laws which empowers one Judge, High Court can overpower Chairman, Authority, Board or Corporation can scrutinise Plan technically in absence of proper technical person in his office-'yes' or 'No'."

It is also stated that:- *"Because judgement given by the Judge of High Court does not follow the Code of 'National Building Code-2005' or rules of Assam Building Rules, 2013 where it is mentioned, Plan cannot be scrutinised technically by less qualified technical person or in absence of panel of Senior SERs in the office. Hence*

here is an appeal to furnish the above information. If yes; furnish the rules/laws in details."

Submission:-

While admitting the appeal on 28.09.2018, the date fixed for hearing was fixed on 25/10/2018, and notice was served upon the concerned parties vide letter No. NO. HC. XXXV-16 /2018/ 256 / RTI, Dated 12th October, 2018. But the appellant did not turn up, instead one letter, dated 25.10.2018 has been received from him on 03.11.2018 wherein he has stated that:- ***"nothing personal to hear all are documentary and all documents can be verified in Karimganj Courts only."***

Decision and reasons thereof:-

I have gone through the appeal and the documents enclosed therewith carefully. Also I have gone through the record carefully. What is 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 defines 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 band 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:-

"Reply to Query No.1 and 2: Rendering opinion, interpretation etc., does not fall under the purview of RTI Act, 2005."

The appellant has never ever averred either in his appeal petition or in his letter dated 25.10.2018, as to how he is aggrieved by the reply received from the PIO. But, he has only prayed for furnishing the information as sought for in his application, which the PIO has denied in the specific terms that "rendering opinion, interpretation etc., does not fall under the purview of RTI Act, 2005."

Now the pointed question to be answered by this authority is - whether the reply, so furnished by the PIO, suffers from any infirmity while the opinion is also information as defined in Section 2(f) of the RTI Act.

In this context reference may be made to one 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 PIO is not supposed to create or collate information or supposed to solve the problems raised by the appellant.

In view of the above position, so 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.

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.


03-12-18
**Registrar General
-cum-
Appellate Authority.**