

**GOA STATE INFORMATION COMMISSION**  
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

---

**Appeal No. 162/2016**

Trajano D'Mello,  
Opposite Peddem Sports Compex,  
Mapusa Goa.

..... Appellant

**V/s.**

1. Public Information Officer,  
O/o Commissioner of Commercial taxes,  
Vikrikar Bhavan, panaji Goa.

2. Commercial Tax Officer,  
Panaji Ward, Panaji Goa.

..... Respondents

**CORAM:**

**Smt. Pratima K. Vernekar**, State Information Commissioner

**Filed on: 30/08/2016**

**Decided on: 14/07/2017**

**ORDER**

1. The second appeal came to be filed by the Appellant Shri Trajano D'melo on 29/8/16 against Respondent No. 1 PIO, of the office of Commissioner of Commercial taxes, Panaji and against Respondent No. 2 Commercial tax officer u/s (3 ) of section 19 of the RTI Act 2005.
2. The brief facts leading to the second appeal are that the appellant vide his application dated 26/4/16 had sought for the information about, commercial tax levied and paid by the organiser of " Sunburn" EMD festival for the year 2013-14, 2014-15 and 2015-16 on seven points as stated therein in the said application .
3. The Respondent No.1 PIO thereafter transferred the said application to the Respondent No. 2 commercial tax officer, Panaji Goa on 10/5/16 .
4. The Respondent No. 2 herein vide his letter dated 27/5/2016 rejected the said information by quoting section 79 of Goa Valued Added Tax , 2005 read with section 8(d) of the RTI Act 2005.

5. Being not satisfied with the reply of respondent No. 2, the appellant filed first appeal before the commissioner of commercial tax on 28/6/16, being first appellate authority and the first appellate authority by an order dated 28/6/16 was pleased to dismiss the appeal of the appellant by upholding the say of Respondent No. 2 .
6. Being aggrieved by the action of both the Respondents the present appeal came to be filed with a prayer for direction to the respondent No. 2, for providing him informationas sought by him to him and for invoking penal provision u/s 20(1) RTI Act 2005.
7. After notifying the parties, the matter was taken up on board. In pursuant to the notice, appellant appeared in person. Respondent PIO No. 2 Ms Asha Harmalkar was present and on behalf of Respondent No. 1 Smt. Prassana Halnekar was present.
8. Reply filed by Respondent No. 2 PIO on 15/5/17 alongwith a enclosure. Copy of the same was furnished to the appellant .
9. Arguments were advanced by the parties .
10. It is a case of a appellant that he had learned from the Media and other sources that though "Sunburn" EDM, festival organizers organizes EDM festival every year from 2013 onwards and earns huge money they are not paying the government dues regularly as such to avoid the loss of Government treasury he had filed a Public Interest Litigation (PIL) before the Hon'ble High Court of Bombay at Goa which was registered as PIL . W.P. No. 24/14 and the Judgment was passed by Hon'ble High court on 17/12/17. It is his further case that Hon'ble High court while pronouncing the Judgment had passed strictures against the "Sunburn" the EDM Organisers and state authority for not recovering the taxes promptly. He further stated that the Hon'ble High Court also came to the conclusion that the amount assessed and payable by the

said company far exceeds the prima facie the amount standing in the security deposit with the said Government .

He further submitted that the Hon'ble High Court also made clear to ensure that the amount payable from the EDM company should be recovered as expeditiously as possible. He took my attention to the para 14 of the said Judgment where the said observations are reflected.

The appellant also submitted that since nothing was done by the concerned authorities , he again approached the Hon'ble High court and his petition was registered at stamp number Main No. 3399/2016. and the Hon'ble High Court has disposed the said petition by an order dated 4/11/16. He took me to the para 14 of the said judgment .

The Hon'ble High Court has held that " if there is no legal impediment like stay from the appellate authority or tribunal there is no reason as to why the state authorities should not take expeditious steps to recover such amount particularly in the light of the directions issued by the court while disposing PIL Writ Petition No. 24/14, accordingly such directions are reiterated ".

The appellant further submitted that the Ld. Advocate General also handed over a chart disclosing the amount payable towards the police bandobast and service tax for a musical festival from 2010 to 2015 before the Hon'ble High Court in IPL Writ Petition No. 24/16 filed by him and in support of his contention produced the copy of the Judgment passed by the Hon'ble High Court of Bombay at Goa in PIL Writ Petition No. 24/2016, wherein it has been held by the Hon'ble High Court at para 6

"Even pendency of issue cannot be a reason for the state or its authorities not asked for dues /arrears of taxes of such amount. It is its obligation to recover the tax in accordance with the law".

As such, it was contended by the appellant that being he is the petitional in those cases he has a legal right to know whether

statutory dues and other dues are recovered by the state authorities as per the direction of the Hon'ble High Court, which he had sought in a larger public interest by way of the above RTI application.

It is his further case that he is neither a rival company of a "Sunburn", EDM organizers neither who want to use this information to dilute commercial confidence, trade secret or intellectual property of the organisers. It is his case that there is a lethargic attitude on the part of the State Government in recovering statutory dues from the EDM Organisers as such grave losses to the public exchangers have been caused . It is his case that he requires such information to seek appropriate order from the court to instruct the state government and to recover statutory and other due on urgent basis from EDM organizers, as such the disclosure of information is warranted in the larger public interest.

In nutshell it is the grievance of the appellant that there is inaction on the part of the state authorities in recovering the dues and as such he had sought for the said information in the larger public interest.

11. Respondent PIO contended that the said information cannot be disclosed in terms of section 79 of the Goa value added tax 2005 read with section 8(1)(d) and 8(1) (e). It is their further case that the commercial tax department collect the information from his dealer in fiduciary capacity and the sunset gateways company vide their letter dated 19/5/16 have objected for disclosure of the same. It is their further case that the Hon'ble High Court nowhere directed to the Department or any other officer of the department to provide information to the appellant.
12. The third party namely M/s Sunset Getways vide letter dated 19/05/2016 objected for disclosure of information to the appellant on the ground that all the financial data, information and content

are confidential in nature and if the said is passed to the appellant, grave harm will be caused to their company. It was further contended that said information is exempted U/s 8 and Section 11 of the Act from disclosure.

13. I have considered the submissions of the parties and also the documents available on the records including the letter dated 19/5/2016 and the objection raised by the third party i.e. sunset Getways company organizers of sunburn Goa Musical Festival in disclosing the said information and as such no separate notice was issued to the third party.
14. In view of rival contention the issue arises for my determination are as under:
  - i. Whether RTI Act 2005 overrides various provisions of special statutes which confer confidentiality in the information obtained by the Public authority and such special statutes would repeal or overruled by the RTI Act 2005?
  - ii. Whether there was a fiduciary relationship existing between the Respondents and the EDM company whose information was sought by the appellant ?
  - iii. whether appellant has sought information in larger public interest?
15. In an land mark case " reserve Bank Of India" and others V/s Jayantilal N. Mistry and others; ( Civil )Original Jurisdiction in transferred case (Civil) No. 91 of 2015 (Arising out of transfer petition (Civil) No. 707 of 2012 )" . upheld the orders passed by the central information on the issue whether the Public authority under right to information Act, 2005 can deny information to the public on the basis of certain legal exemptions; Public at economic interest, committed confidence and fudiciary relationship? and whether giving information to the general public would be detrimental to the economic interest of the country?

The apex Court , at relevant para 43 has held

*“The submission of the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of RBI Act and Banking Regulation Act is clearly misconceived . RTI Act 2005 contains a clear provision (section 22) by virtue of which it overrides all other Acts including official secrets Act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail insofar as transparency and access to information is concerned. Moreover , the RTI Act 2005, being a later law, specifically brought into usher transparency and to transform the way official business is conducted , would have to override all earlier practices and laws in order to achieve its objective. The only exceptions to access to information are contained in RTI Act itself in section 8”.*

At relevant para 55, 56,57 the apex Court took a detailed review on the definition of fiduciary relations and have discussed what amounts to fiduciary relationship. They have specified the criteria under which the parties can claim of having fiduciary relations.

At relevant par 62 The Apex Court has observed

“the exemption contained in section 8(1) (e) applies to exceptional cases and only with regards to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regularity agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case, the financial institutions have an obligation to provide all the information to the RBI and such an information shared under an obligation/duty cannot be considered to come under the ,

purview of being shared in fiduciary relationship is "Trust and Confidence".

Para 68 it has been held

"Even if we were to consider that RBI and the Financial institutions shared a "fiduciary Relationship", Section 2(f) would still make the information shared between them to be accessible by the public. The facts reveal that Banks are trying to cover up their underhand actions, they are even more liable to be subjected to public scrutiny".

At relevant para 75 to Apex court has held

*"The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy".*

16. The ratio laid down in above judgment is squarely applicable to the facts of the present case. The RTI Act is a central Act which came into force on 15/06/2005, subsequent to the value added tax, 2005 which is a local legislation enacted by the State Government. The relation between the Public Authority and the concerned company does not come within the ambit of definition of Fiduciary relationship as interpreted by the apex Court in the above Judgment.

In the present case neither the respondent No. 1 PIO or Commercial Tax Department nor the Sunset Getways are required to act in the interest of each other.

Nevertheless Section 8(d) also states that the information can be disclosed if larger public interest warrants.

17. In writ Petition (MD) No. 5427, V.V. minerals V/s Director of Geology at relevant para 12 has held that.

“When the third Respondent as an information officer, ordering notice to the petitioner and taking their objections and refusing to furnish the documents sought for by a citizen is clearly beyond the scope of the RTI Act. If the information is available with the state and such information is in exclusive custody of the state, the question of seeking any opinion from the third party on such issues may not arise, especially when they are public documents. By disclosure of such information, no privilege or business interests of the petitioner are affected. On the other hand, such a disclosure may help any party to act upon those documents and take appropriate steps”.

At Para 14, it has been held “ even if Commercial confidence, trade secrets, which disclosure will harm competition position of the third party, the section do not prescribe any total bar and it is for the competent authority to be satisfied with a larger public interest, which warrants the disclosure of such information”.

At Para 16, Apex Court held “It is clear that when RTI Act was enacted it does not give any full immunity for disclosure of a third party document. But on the other hand, it gives the authorities under RTI Act too weight the pros and cons of weighing the conflict of interest between private commercial interest and public interest in the disclosure of such information”.

At Para 17, It has been held “Therefore, no total immunity can be claimed by any so-called third party. Further, it is not a matter covered by section 8(1)(d) of the Act, the question of any denial by the information officer does not arise”.

At Para 19, It has been held” If a person, who seeks for documents, is a business competitor and if any trade secret is sought for, then such document may be denied. But regarding a public documents, if sought for by an individual whatever the motivation of such to check individual in seeking document has no relevancy as the Central RTI Act had not made any distinction between a citizen and so called motivated citizen”

18. Yet in another decision i.e. Union of India V/s Balendra Kumar W.P. (C)120/2010 and CM APPL233/2010 in the High Court of Delhi has



held "Public interest in ordering disclosure outweighed any right to privacy with reference to section 11(1) read with section 8(1)(j) of RTI Act".

19. In the present case. The appellant herein has established that the information is required by him in the larger public interest.
20. Moreover in my opinion the information sought by the appellant cannot come under exemption as provided u/s 79 of value added tax 2005, as the information sought is neither particular of any statement nor returns or accounts or documents submitted by the company. What is sought is only the summary due and/or the quantum of taxes due and collected by department from Sunset Getways. In my opinion that the disclosure of the said information sought will also not adversely effect the economic interest of the state.
21. The Hon'ble High Court of Delhi - Writ Petition (c) 3660/12 Union of India V/s Vishwas Bhampurkar has held

" The right to information Act is a progressive legislation aimed at providing, to the citizens access to the information which before the said Act came into force, could not be claimed as a matter of right. The intent behind enactment of the Act is to disclose the information to the maximum extent possible subject of course to contain safeguard and exemption. Therefore while interpreting the provisions of the Act, the court needs to take view which would advance the objective behind enactment of the Act, instead of taking a restrictive and hyper technical approach which would obstruct the flow of information to the citizen".

22. Yet in another decision the apex court in S.P. Gupta V/S Union of India, AIR 1982 SC 149 has observed

" No democratic Government can survive without accountability and the basic postulate of accountability is that people should have information about the functioning of the Government, that an open Society is the new democratic

culture towards which every liberal democracy is moving and our society should be no exception. The concept of the open Government is the direct emanation from the right to know which seems to be implicit in the right of freedom of speech and expression guaranteed under Article 19(1) (a). Therefore, disclosure of information in regards to the **functioning of the Government must be the rule, and secrecy an exception**, justified only where the strictest requirement of public interest so demands”.

23. Based on the above decision and taking into consideration the facts of the present case disclosure of the information is required in the larger public interest as such I find merit in the appeal. Hence the following order.

#### ORDER

1. The respondent No. 2 is hereby Directed to furnish clear and complete information to the appellant as sought by him vide his application dated 26/4/2016 within three weeks free of cost on the receipt of the order.
2. Rest prayers are not granted.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Pronounced in the open court.

Sd/-

**(Ms.Pratima K. Vernekar)**  
State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa

