

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No.62/2017

Shri Sushant Nagvekar,
House No. C-312, Fondvem,
Ribandar-Goa.

.....Appellant.

V/s

1. Satyawan Bhivshet,
Asst. Commissioner of Excise,
Excise Department,
Panaji Goa.

2. Menino D'Sousa,
Commissioner of Excise,
Excise Department,
Panaji Goa.

..... Respondents.

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner.

Filed on: 11/05/2017

Decided on: 11/12/2017

1. The appellant Shri Sushant Nagvekar herein, in exercise of his right under section 6(1) of the right to information Act ,2005 by his application dated 20/10/16 addressed to the respondent no.1 PIO of office of the Commissioner of Excise, Panaji sought information on two points as stated therein .
2. The Respondent No.1 responded the said application vide their letter dated 17/11/16 calling upon appellant to do the inspection of file in respect of point NO. 1 . with regards to point no. 2 the appellant was ask to specify/clarification the same.
3. Being not satisfied with the reply of Respondent no.1 ,the appellant then approached the Exercise commissioner, being first appellate authority on 20/1/2017 whose is the Respondent no.2 herein .

4. The Respondent no.2, vide order dated 17/7/2017 disposed the said appeal by upholding the say of the PIO and with observation that appellant should approach the PIO with his fresh query with regards to information at point no.2
5. Being aggrieved by the response of PIO and order of FAA, the appellant preferred the present second appeal on 11/5/2017 with a prayers for directions to respondent PIO for furnishing him information at point no.2 ,for invoking penal provisions as against Respondent no.1 and directions to Respondent no.2 for taking cognizance of criminal act of perjury .
6. In pursuant to the notice of this commission , the appellant was present in person .PIO Shri S. Bhivshet appeared and filed his reply on 14/9/17.The copy of the said reply was furnished to the appellant.
7. Written arguments came to be filed on behalf of appellant on 22/11/17.vide written arguments appellant contended that the application has to be processed within 5 days from the date of the receipt and subsequently information can be provided within 30 days. It is further contended that respondent no.1 has understood as to what information was required by the appellant as such he may be directed to give a specific reply as per the records to the point no.2 .
8. PIO Shri Satyawan Bhivshet during arguments submitted that appellant had never raised the points as stated by him in his application dated 22/11/2017 before the first appellate authority. He further contended that para 2 of the said application does not related to RTI matters itself on that ground he submitted to decide the matter on merits.
9. On perusal of the records, the information sought at query no.2, is found to be very vague . He is trying to seek some information about some affidavits by drawing himself conclusions that it is false. As there is nothing placed on record by the appellant to show that appropriate

authority had come to the findings that those affidavits were false and further action if at all were ordered, as such I do not find any irregularity in the reply of PIO given u/s 7. Even otherwise any answer by PIO to such query will amount to his admission that some affidavit were false without any records resulting in such inference .

10. It is the duty of PIO to provide information as available on their records and he is not suppose to create any information.
11. Hon'ble supreme Court in "**Central Board of Secondary Education and another V/s Aditya Bandopadhyay and Others (Civil Appeal No. 6454 of 2011)**", while dealing with the extent of information under the Act at para 35 has observed:

"At this juncture, it is necessary to clear some misconception about the RTI Act . The RTI Act provides access to all information that is available and existing . This is clear from the combined reading of section 3 and the definition of "information " and "right to information "under clause (f) and (j) of section 2 of the Act . If the public authority has any information in the form of data or analysed 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, 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/or 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, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act*".

12. Yet in another decision, the Hon'ble Allahabad High Court, Luchnow bench in the decision given in case:- MISC.Bench No. 69/2016; Subhashchandra Vishwkarma V/s Chief Information Commission U.P.in and others has held; vide order dated 14/1/2016

“ we have no hesitation to record that in action on non statutory applications/complaints filed by any person where the state authority are not obliged to take a decision would not fall within a definition of information giving rise to a cause u/s 6 of the Act. If all such in actions are construed to be cognizable under the Right to Information Act , the misused of Act would become rampant and the provisions of the Act in that view of the matter would result into an abuse a process of law”.

13. Considering the above ratios laid down by the Hon'ble courts, I am of the opinion that information sought at point no. 2 does not come within the definition of "Information".

14. It appears that appellant has misdefined the scope of section 7 by presuming that in any application filed under RTI Act is required to be processed within 5 days without any specific provision under the Act.

15. Since , vide reply dated 14/09/2017 Respondent PIO have shown his desire to give appellant inspection of the said file pertaining to transfer of ownership of licence bearing No. FCL/968 for retail sale of Indian Made foreign Liquor and Country Liquor for consumption of Tiswadi Taluka and for providing him information which he desires. I feel the ends of Justice will meet with the following order:

Order

The appellant if so desire may approach the Respondent PIO within one month from the date of the receipt of the order for carrying out the inspection of file pertaining to transfer of ownership of license bearing No. FCL/968 for retail sale of Indian Made foreign Liquor and Country Liquor

for consumption of Tiswadi Taluka. The date for inspection should be mutually fixed by both the parties.

The Appeal proceedings disposed according .proceedings stands closed .

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

Ak/-