

GOA STATE INFORMATION COMMISSION

‘Kamat Towers’ Seventh Floor, Patto, Panaji – Goa

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Appeal No.62/SCIC/2016

Shri Sushant P. Nagvekar,
H. No.C-312, Fondvem,
Ribandar –Goa Appellant.

V/s

- 1) Shri Durgesh Naik,
Excise Inspector and Public Information Officer,
- 2) Asst. commissioner of Excise-I & PIO,
Office of Commissioner of Excise,
Panaji –Goa.
- 3) The Commissioner of Excise and FAA,
Office of Commissioner of Excise,
Panaji –Goa. Respondents

Filed on 13/04/2016

Disposed on: 06/06/2017

1) FACTS:

a) The appellant vide his application dated 09/10/2015 filed u/s 6(1) of the Right to information Act 2005 (Act) addressed to Excise Inspector, Tiswadi, sought information on points A to E therein. The said application was transferred to respondent No.2, PIO u/s 6(3) of the act on 5/11/2015, in respect of point (E) therein.

b) The PIO, the respondent no.1 herein, replied on 09/11/2015, directed the appellant to collect the information from his office on payment of Rs.2/- per copy and that on visiting the office of PIO and on taking objection to the fees the information was furnished free of cost.

c) According to the appellant the communication is made outside the RTI regime and pursue RTI matter separately. It is with these contentions the appellant filed first appeal.

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d) According to appellant the First Appellate Authority (FAA) decided the said appeal after period of 45 days without giving any reason.

e) It is with these contentions that the appellant has approached this Commission. According to appellant the Commissioner of excise has ignored the plea for furnishing of information at point(5) of his request. The appellant has a grievance regarding the procedure adopted by FAA. It is also the contention for appellant that there is a miscarriage of Goa Excise Duty Act & Rules 1964.

f) Parties were notified and the parties filed their replies. The respondent No.3 in his affidavit in reply filed on 15/12/2016 interalia submitted that the respondent No.2 was not joined as a party in first appeal and that regarding point 'E' of the application u/s 6 (1) the same was not agitated before the FAA and hence no appeal would lie in respect of point 'E'. He has further submitted that without, prejudice, the information at point 'E' is also furnished and has produced a copy of letter.

g) The appellant filed his written submissions on 27/02/2017 as also additional submissions on 27/3/2017. I have considered the applications pleadings as also the submissions of the parties considering the same I proceed to record my findings.

2) FINDINGS:

a) Considering the rival contentions of the parties, the issues those are required to be dealt with by the commission are:

i) Whether the appellant has been furnished with the information.

ii) Whether the delay if any caused in furnishing the information is deliberate and intentional.

b) By his application, dated 09/10/2015 the appellant has sought for information on five points viz point (A) to(E). I have also perused the reply filed on record which is the response u/s 7(1) of the act. On considering the request and the reply, it is clear that the information sought at points (A),(B) and (D) , being in the nature of advise and opinion were falling beyond the scope of information u/s 2(j) of the act and hence need not be answered. However the same are answered

voluntarily. Regarding point (C) the same is also furnished. What has remained to be furnished was the information at point (E).

c) The controversy herein is pertaining to the reply on point 'E'. Vide said point appellant has sought the movement of file in the process the renewal of licence with notings of all concerned officers. The said point was transferred initially to PIO, office of Commissioner of Excise Panaji, the respondent no.2. In the first appeal, the appellant was aggrieved for not receiving the information at said point but he failed to join the respondent no.2 as a party, from whom the information was to be received. In the above situation the respondent no.2 could not avail opportunity to explain his side or the reason for delay, if any, caused.

d) The PIO, office of Excise station Tiswadi, vide his reply, dated 11/01/2016, filed before this Commission with reference to point (E), has submitted that "*there is no system of noting for renewal of licence at station level. However, the licence is renewed based on the application submitted by applicant.*"

Considering the said reply and the information furnished, I am satisfied that the information has been fully furnished. The prayer (3) of the appeal vis-à-vis the application u/s 6(1) of the act does not survive.

e) I have perused the prayers of the appellant in the appeal. On careful analysis of the same it is seen that the prayers (1) to (4) being beyond the scope and powers under the act, cannot be granted by this commission. The prayer (5) of the appeal memo, is appropriately dealt with under this order. In view of the above findings the issue no.(i) as framed above is answered in the affirmative.

f) Regarding the appellant's prayer (6) of the appeal memo, I find that there is no deliberate or intentional delay in imparting information. Besides that the PIO, i.e. respondent no.2 herein, had no opportunity to prove that the delay or denial of information was justified, being not a party. The same could be availed by him only before this commission where he has furnished the information. Hence the issue no. (ii), as framed above is answered in the negative.

g) The appellant has also objected for the appointment of the advocate by the respondent Authority. He has also filed copies of the

correspondence entered with other department. In this context it is to be noted that the issue of appointment of an advocate by the public Authority is within the domain of such authority and the Government. The Commission has no role to play in such appointment and cannot interfere in such action of the government.

h) In the facts and circumstances I find no merits in the appeal. The information to which the appellant was entitled to has been furnished and hence no intervention of the commission is required thereto. In view of the above, I proceed to dispose the present appeal with order as under:

ORDER

The appeal stands dismissed. The right of appellant to seek further information are kept open. Proceedings closed. Notify the parties.

Pronounced in the open proceedings.

Sd/-
(Mr. Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa