

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

Appeal No 6/2018/SIC-I/

Shri Uday Ramnath Pokle,
r/o. Flat No. 8, Apa Commercial Complex,
Valpoi – Goa
Pincode : 403506 **Appellant**
 v/s
(1) Public Information Officer (PIO),
Shri Satyawan Bhivshet, Excise Department,
Panaji –Goa.
(2)First Appellate Authority(FAA)/ Shri Amit Satija, IAS
Excise Department, Panaji - Goa
Respondents

Filed on: 9/01/2018
Decided on: 5/06/2018

ORDER

1. By this appeal the appellant Shri Uday R. Pokle assails the order dated 17/10/2017, passed by the Commissioner of Excise and the first appellate authority in appeal no. 7 of 2017 filed by the appellant herein.
2. The facts in brief is arises in the present appeal are that the appellant by his application, dated 24/7/2017 sought certain information from Respondent no. 1 herein. The said information was sought by Appellant in excises of his right u/s 6(1) of the Right to information Act, 2005.
3. On receipt of the said application by respondent no. 1 PIO, he by his letter dated 22/8/2017 informed the appellant that there is no centralized record kept of all showcause notices issued from 2009-2010 to 2017-2018 for transfer of license of liquor

licenses and the said information was also denied in terms of section 7(9) of RTI Act 2005.

4. Being not satisfied with the said reply the appellant preferred first appeal on 15/9/2017 before Respondent no. 2 herein and the Respondent No. 2 disposed the said first appeal vide order dated 17/10/2017 by upholding the say of PIO .
5. Being aggrieved the action of both the Respondent, the present appeal came to be filed before this commission on 9/1/2018 in terms of section 19 (3) of RTI Act thereby seeking relief of directions to Respondent no. 1 for furnishing him the information, for invoking penal provision and for direction to the public authority for compliance of section 4 of the Act.
6. In pursuant to notice of this Commission, appellant appeared in person and Respondent Public Information Officer (PIO) Shri Satyawan Bhiv Shet was present. Non appeared for first appellate authority.
7. Reply filed by PIO on 10/4/2018 , additional reply on 27/4/2018 and affidavit in reply on 11/5/2018 alongwith the enclosures .
8. The PIO during the hearing submitted that the information sought by the appellant is voluminous in nature and time consuming as such he suggested the appellant to carry out the inspection of the relevant files including the guard files pertaining to showcause notice issued for the financial year 2009 to 2018 and to identify the documents which are required by him. Said arrangement was agreed by the appellant and accordingly the appellant on subsequent dates of hearing

submitted that he could carry out the part of the inspection of three of the guard files being voluminous in nature.

9. The PIO on the subsequent date of hearing sought time to provide the information which are available in the office records and also submitted that there are taluka level offices and the PIO's are appointed for those offices and the said notices are in the respective files in their offices and showed his desire of transferring the application to the PIO of respective offices. Accordingly vide memorandum dated 12/3/018 the same was transferred u/s 5 (5) of RTI At, 2005 to all the excise station of Excise Department.
10. Compliance report with regards to section 4 of RTI Act, 2005 came to be filed on behalf of first appellate authority /public authority on 19/1/2018 and on 25/4/2018 along with the enclosures. Vide said report of public authority also submitted that they have also initiated the process of maintaining separate register for showcause notices for the financial year 2018-19 and the process of making showcause notices available on their website is on the way and the same shall be made available on the online at the earliest. It was also further submitted that the data of department of exercise as per section 4(1) (b) of the RTI Act, 2005 has been updated on the Government portal [https://egov.goa.nic.in /rtipublic](https://egov.goa.nic.in/rtipublic).
11. Copies of the replies and the compliance reports filed by the respondents were furnished to the appellant.
12. Argument were advanced by both the parties.

13. It is the contention of the appellant that respondent No. 2 is the originator of the information sought by the appellant and the showcause notices are issued under his seal and signature as such the information should exist and available with him in the form of certified Xerox copies . It was further submitted that the information only can be denied u/s 8 & 9 of the Act and section 7(9) of the RTI Act, cannot be invoked and the PIO has erred in applying that section . It was further contended that PIO should have replied within 5 days or expidiously if section 7(9) had to be applied by him and not after 28 days. It was further contended that the three notices which are furnished to him during present proceedings shows that it was available with him and both the respondents well planed conspiracy to denied the information so that all the cases of violation of excise duty Act and Rules 1964 are wiped out or retrospectely regularized thus defeating the intent and the time bound mechanism set out in the RTI Act and on that ground he sought for penalty as against respondent No. 1 .
14. It was submitted by the PIO that the showcause notices were not available at one place in their head office as the said notices were forwarded to the concerned excise inspector to serve the concern parties and no duplicate copies were maintained in the head office except in the guard file. It was further contended that the Excise Inspector of the said station usually keep one copy of the said notices in the licence file . It was further contended that Commissioner of Excise calls for the files from the Taluka offices to the head office if required. It was further contended that he made efforts to trace the file and he found files pertaining to Suresh Katkar , of Prabhakar Volvoikar were lying at the head office as such he provided

information pertaining to the showcase notice issued to Sulakshna Katkar , Smt. Prabhavati Volvoikar and Prabhakar Volvoikar vide their additional reply on 18//4/2018 and 27/4/2018. He further submitted that information pertaining to other excise station were also furnished to the appellant during the present proceedings .

15. I have scrutinize the records and also consider the submissions of both the parties.
16. It is seen from the records initially the information was denied to the appellant, the said information came to be supplied i.e the three show notices issued to the parties and the reply sought from respective excise station of various Talukas to the appellant only during the present proceedings that too on 27/4/2018. The files pertaining to Shri Suresh Katkar, Prabhakar Volvoikar and three showcase notices even though available in the head office was not furnished to the appellant at the inception itself. Further the PIO ought to have sought the assistance u/s 5(4) or in alternative ought to have transferred the same u/s 6(3) to the all Excise Station of respective Talukas at the initial stage itself within stipulated time as contemplated under the Act. The records shows the said was transferred to the excise stations only on 12/3/2018 . There is apparently a delay in transferring the same and in furnishing the information to the appellant.
17. It is quit obvious that the appellant have suffered lots of harassment and mental agony in seeking information. He has been made to run from post to pillar, lots of his valuable time is being spent on seeking the information. If corrects information

was given, such harassment and detriment could have been avoided.

18. Public authority must introspect that non furnishing of the correct or incomplete information lands the citizen before FAA and also before this commission resulting into unnecessary harassment of the common men which is socially abhorring and legally impermissible
19. The PIO is designated person of Department who is responsible to ensure to the compliance of RTI Act and facilitate the information seeker in obtaining the information. However in this present case the PIO cannot be solely blamed as the records were not maintained and preserved properly by the public authority /issuing authorities of notices herein
20. The Delhi High Court writ petition (C)11271/09; in case of Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's has held that ;

"The legislature has cautiously provided that only in cases of **malafides or unreasonable conduct**, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would**

not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

21. There is no cogent, convincing and sufficient evidence brought on record by the appellant for invoking penal provisions on the contrary, from the records one could gather that the information sought was not systematically maintained by the concerned public authority if the records were maintained properly by Public Authority, the hardship caused to PIO in locating the information could have been avoided. As such by applying the above ratio laid down in case of Registrar of Companies (supra) I am of the opinion that for the fault of public authority in not properly maintaining record, the PIO solely cannot be blamed and cannot be made a scapegoat, and as such eventhough there is delay in furnishing information by considering this as 1st lapse on part of PIO lenient view is taken in the matter and Respondent No. 1 PIO is hereby directed to be vigilant henceforth while dealing with RTI matters.
22. Since the information have been provided to the appellant and as the public authority have now rectified the process of maintaining and preserving the records and since have complied with the provision of section 4(1) (a)(b) of the RTI Act, the prayer sought by the appellant becomes redundant.

23. In the above given circumstances. The Appeal 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

Kk/-