

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

CORAM: Shri Juino De Souza: State Information Commissioner

Appeal No. 177/2019/SIC-II

Shri Sushant P. Nagvenkar,
House No. c-312, Fondvem,
Ribandar – Goa. 4003 006

... Appellant

v/s

1. The Public Information Officer,
Asst. Commissioner of Excise,
Excise Department, Panaji - Goa
2. First Appellate Authority,
Shri Amit Sateja, I.A.S
Commissioner of Excise,
Excise Department, Panaji – Goa.

.... Respondents

Relevant emerging dates:

Date of Hearing : 20-01-2020

Date of Decision : 22-01-2020

O R D E R

1. **Brief facts of the case** are that the Appellant vide an RTI application dated on 18/01/2019 sought certain information from the Respondent PIO, O/o Commissioner of Excise, Panaji-Goa under section 6(1) of the RTI act 2005.
2. The information pertains to 5 points and the Appellant is seeking (1) Complete file pertaining to Show Cause Notice No. CE/4-52-16/Exc/Tis/4235 dated 12/12/2017 issued to Smt. Prabhavati P. Volvoikar (2) Copy of the report, if any, filed by the Additional Commissioner of Excise, Shri. Ajit Pawaskar as per the directions vide Oder No.CE/4-52-16/Exc/Tis/669 dated 17/12/2018 (3) If the report referred at Sr.No 2 has not been filed, copy of any application seeking more time filed and granted. (4) If the license at her subject of Show Cause Notice has been transferred from the name of Prabhakar Volvoikar to Prabhavati Volvoikar, complete file pertaining to said process of transfer and (5) Extract of Statutory provision which empower the license to be reinstated in the name of dead person, if any.

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3. The PIO vide reply letter No. CE/1-3/2019/RTI/5475 dated 05/03/2019 furnished the information in tabulation form and in his reply has also stated that the inspection of the file was done by the Appellant on 28/02/2019. In point no.1, copies of information documents were enclosed by the PIO including Noting side 19 page no.1/c to 19/c and Correspondence side 12 pages at page no.20/c to 31/c. In point No.2 & 5, PIO stated that the information as on date is not available in the office. In point No.3 the PIO has enclosed the information in 01 page at page No.32/c, Correspondence side 09 pages at page No.33/c to 41/c and Noting side 01 page at page no.42/c. In point No.4, the PIO stated that the matter is under process.
4. Not satisfied with the reply of the PIO the Appellant filed a First Appeal on 11/03/2019 and the First Appellate Authority, heard the Appeal on 29/04/2019. It is the case of the Appellant that the First Appellate Authority has not passed any Order till date and as such he has approached the Commission by way of Second Appeal registered on 11/06/2019 and has prayed to issue directions to the PIO to provide information as sought at point No.5 of RTI application dated 18/01/2019 expeditiously and also to provide the copy of the report at point No.2.
5. **HEARNG:** This matter has come up before the Commission on several previous occasions and hence taken up for final disposal. During the hearing Appellant Shri Sushant P. Nagvekar is present in person. The Respondent PIO, Shri. Navnath Naik, Asst. Commissioner-I, Excise Department, is present on his own behalf as also on behalf of FAA.
6. **SUBMISSION:** The Appellant submits that the reply filed by the PIO and reply filed by the FAA is one and the same and is a replica and it shows that two independent authorities have acted in collusion with each other thereby defeating the intent and purpose behind the inception of two distinct quasi judiciary authorities.

7. The Appellant states that he is interested in receiving information at point No.2 & 5. In point No.2 it has been replied by the PIO as "Information as of date is not available and with respect to this the Appellant submits that the availability of the said report is a must since the generation of report is consequence of a statutory order which the respondent No.2, as per his reply filed and claims to be a judicial order and therefore the information must be available.
8. The Appellant argues that any document that is generated in the Government office as per Government rule also should be available on record with the public authority and in case the information documents are not available, then the PIO should file an Affidavit. The Appellant finally submits that public authority should comply with section 4(1)(a) and 4(1)(b) and take steps for Sou moto disclosure on the website.
9. Per contra the Respondent PIO submits that the Appellant had inspected all files on 28/02/2019 and that whatever information as was available with the public authority has been furnished to him vide letter No. CE/1-3/2019/RTI/5475 dated 05/03/2019. The PIO also submits that the First Appellate Authority (FAA) had passed an Order dated 07/06/2019. The PIO furnishes a copy of the said Order of the First Appellate Authority (FAA) before the Commission which is taken on record. One copy is also served on the Appellant.
10. The PIO submits that hearing of the First Appeal was fixed on 10/4/2019, however the Appellant requested for adjournment and the matter was fixed again on 29/04/2019 and the Appellant was informed and subsequently the Order was passed. It is further submitted that in Point No.2, the information was not available and the same was informed to the Appellant. It is also submitted that he as the PIO has made a diligent search for the information and despite thorough and complete search, the said information at point no 2 is not traceable.

11. With regard to information at point No.5, the PIO states that it pertains to the Act and rule which is available in booklet form and also on the department website and the Appellant can download a copy of the same. The PIO accordingly requests the Commission to dispose of the matter.
12. **FINDINGS:** The Commission after hearing the submission of the respective parties and perusing the material on record including the final written arguments filed by the appellant on 20/01/2020, reply of the PIO & FAA on 31/07/2019 and Order FAA dated 07/06/2019 indeed finds that the PIO has furnished all information as was available with the public authority. The Commission also finds that the Appellant has inspected the file on 28/02/2019 and after inspection the PIO has furnished information as was required by the appellant.
13. The Commission also finds that the FAA has upheld the reply and submission of the PIO and dismissed the appeal. The FAA in his order dated 07/06/2019 has also observed thus: "The Appellant could have sought recourse of appeal u/s 40 of the Goa excise Duty act & Rules 1964, against the order of the Commissioner of Excise before the Chief Secretary in case the Appellant feels that the order passed by the Commissioner of excise is not as per the provisions of law."
14. **DECISION:** As stipulated in the RTI Act, the role of the PIO is to provide information as is available, what is available and if available from the records. The PIO is not called upon to do research or to analyze or to create information to satisfy the whims and fancies of the Appellant.
15. The very fact that the PIO has furnished information vide letter No. CE/1-3/2019/RTI/5475 dated 05/03/2019 is sufficient to prove the bonafide that there is no malafide intention on the part of the PIO to either deny or conceal the information and which is the mandate of the RTI act 2005 and thus the PIO cannot be faulted in any way.

16. The Commission comes to the conclusion that whatever information as was available with the Public authority has been furnished to the appellant in tabulation form on 05/03/2019. The appellant has also taken inspection of all files on 28/02/2019. Also the PIO has clearly stated that information in point No.2 is not available as on date in the office of the Public authority and in point no 5, it has been submitted by the PIO, that a copy of the act and rules are available on the department website and can be downloaded by the appellant if he is interested in the information. Thus there is no necessity for the PIO to file an affidavit to prove that the information is missing or not available.

No intervention is required with the order of the first appellate Authority. Nothing further survives in the Appeal case which accordingly stands disposed. Consequently the reliefs sought by the appellant in his prayer stand rejected.

17. The Commission directs that the public authority should comply with provisions of section 4(1)(a) and 4(1)(b) and take steps for Sou moto disclosure on the department website.

Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

**Sd/-
(Juino De Souza)
State Information Commissioner**