

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Complaint No.122/SCIC/2011

Mrs. Antonieta Ribeiro e Souza,
R/o.Models Exotica,
Building No.5, UG-1,
St. Inez, Panaji - Goa

... Complainant

V/s

Shri Harish N. Adconkar,
Commercial Tax Officer,
Panaji Ward Altinho,
Panaji-Goa

... Opponent

Complainant absent. Adv. A. Couto for complainant
Opponent present

ORDER
(21/12/2011)

1. The Complainant, Mrs. Antonieta Ribeiro e Souza, has filed the present complaint praying that the opponent be directed to comply with the order dated 2/3/2011 of the First Appellate Authority(FAA) forthwith and that necessary punitive action be initiated against the respondent as stipulated U/s.20 of the Right to Information Act, 2005.

2. The brief facts leading to the present complaint are as under:

That the complainant was the owner of Commercial establishment named Goa Food Products engaged in the manufacture and sale of various food products. That vide an agreement, the complainant transferred her right in the said venture to one Mrs. Sheryl Vaz. That on account of the facts that prices of the raw material were not paid by Mrs. Sheryl Vaz to the complainant, she filed Special Civil Suit for recovery of money in the Court of Civil Judge, Senior Division at Panaji against the said Mrs. Sheryl Vaz. That in order to prove her case, the appellant required some information in respect of sales tax return filed by said Mrs. Sheryl Vaz in respect of said establishment. That the complainant vide application dated 24/3/2008 sought certain information under Right to Information Act, 2005 ('RTI' act for short) but the same came to be rejected by opponent by order dated 5/5/2008. That aggrieved by the

said dismissal, the appellant filed the appeal before Commissioner of Commercial taxes/First Appellate Authority(F.A.A.) on 4th June, 2008 and the F.A.A. directed the opponent to furnish the said documents, which he accordingly did. However the copies of the said documents were misplaced and therefore appellant made the fresh application on 07/12/2010 seeking certain information under R.T.I. Act. That by order dated 03/01/2011, the opponent rejected the application whereupon the complainant filed appeal before First Appellate Authority(F.A.A.). By order dated 2nd March, 2011, the F.A.A. allowed the appeal and directed that copies of assessment order and declaration made by the dealer during his assessment be given to the complainant. It is the case of the complainant that despite the order of the F.A.A. the respondent has failed to provide the information. That the complainant wrote a letter to the opponent on 08/03/2011 but the opponent has failed to provide the copies of the document till date. Being aggrieved the complainant has filed the present complaint.

3. The opponent resists the complaint and the reply of the opponent is on record. It is the case of the opponent that the complainant applied for the information vide her letter dated 24/03/2008. That additional Commissioner vide letter dated 17/4/2008 transferred the application to Panaji ward. That upon receipt of the letter, Office of the Panaji ward sent the letter to Mrs Sheryl S.Vaz i.e. the dealer whose information was sought by the complainant. That Mrs. Sheryl Vaz objected to the disclosure of the information and as such the information was refused to the complainant. That being aggrieved the complainant preferred appeal and F.A.A. allowed the appeal and directed to provide copies of assessment order and declaration made by the dealer during the assessment to the complainant. That complainant vide her letter dated 7/12/2010 filed at the Head Office again requested for the same copies. That the said application was transferred to Panaji ward U/s.6(3) of the R.T.I. Act. That the application was again rejected on the same ground. That the complainant preferred appeal before the Appellate Authority and the appeal was allowed. It is the case of the opponent that upon receipt of the order dated 02/03/2011, the complainant was informed by letter dated 15/03/2011 that document sought by them are ready except for the assessment order of M/s Goa Food Product for the period from 1/1/2002 to 17/3/2002. That this file was sent to head office vide office letter dated 18/8/2008. That the complainant vide letter dated

22/3/2011 requested for entire information including the assessment order. That by letter dated 7/3/2011 the opponent requested P.I.O. Head Office to provide the information to the dealer for the period from 1/1/2002 to 17/3/2002 as the assessment case records were lying with the Head Office. The copy of the said letter was also endorsed to the complainant. That the opponent had already informed the complainant about readiness of all the other documents and the question of denying the information by their office does not hold ground. That besides the complainant had not paid the information fees and that though information was ready could not be furnished to the complainant. It is the case of the opponent that the onus of providing information vis a vis assessment file for the period from 1/1/2002 to 17/3/2002 lies with the P.I.O./Office of the Commissioner of Commercial Taxes, Panaji Goa as the file in question is in their possession. That the opponent does not have custody of the assessment file from 1/1/2002 to 17/3/2002 and hence the request of the Complainant could not be complied with.

4. Heard the arguments. Ld. Advocate Shri A. Couto argued on behalf of the complainant and the opponent argued in person.

Advocate for the complainant referred to the facts of the case in detail. According to him information is required. He next submitted that this information was given in the year 2008. However copies were misplaced and hence fresh application was filed. He also referred to the order of the P.I.O. F.A.A. and submitted that the order of F.A.A. has not been complied with. According to him information be furnished.

During the course of his arguments, the opponent submitted that except one file all the information is ready. However, the complainant did not collect the same, regarding the said concerned file, the request was transferred to the concerned department U/s.6(3) of the R.T.I. Act. He submitted that the concerned file is not in his custody and as such he could not furnish the information.

5. I have carefully gone through the records of the case and also considered arguments advanced by the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is not disputed that the complainant, vide application dated 24/3/2008 sought certain information. That notice was given to the third party. Sheryl S. Vaz who objected and information was refused. It is not in dispute that appeal before First Appellate Authority(F.A.A.) was

filed. The same was allowed and subsequently information was furnished.

It is seen that on 7th December, 2010 the complainant sought certain information from the Commissioner of Sales Tax, Panaji-Goa. By letter dated 14/12/2010, the said letter/application was transferred to the Commercial Tax Officer i.e. the opponent herein. By letter dated 3/1/2011 the request was rejected under sec.8(1)(d) of the R.T.I. Act. Being aggrieved the complainant filed the appeal before F.A.A. By order dated 02/03/2011 the appeal was allowed and it was ordered as under:-

“Copies of Assessment orders and declaration made by the dealer during his assessment given to the appellant.”

By letter dated 15/3/2011 the opponent informed the complainant that the certified copies of the documents sought are ready except for the assessment order of M/s.Goa Food Products/ Sheryl Vaz for the period 1/2/2002 to 17/3/2002 as the file pertaining to the said period has been sent to the Head Office. The complainant was also told to pay Rs.14/- towards fees as prescribed under R.T.I. Act. By letter dated 22/3/2011 the complainant informed the opponent that she wants the entire information in toto. The complainant, however, did not pay nor receive the information.

By letter dated 7/3/2011, the opponent informed the Addl. Commissioner of Commercial Taxes that the concerned file is in their office and to process the request at their end. Copy of the letter was sent to the Complainant.

In the instant case, it is seen that notice was earlier sent to Mrs. Sheryl Vaz. By present application the same information was sought. The F.A.A. has already granted the information. This order has not been challenged and therefore the same stands. The opponent will have to comply with the same.

Another aspect is part of information i.e. regarding assessment file is not with the opponent as the same was sent to the office of Addl. Commissioner of Commercial Taxes by letter dated 18/08/2008 for compounding of offence. It is to be noted here that R.T.I. Act does indeed require that information asked for by any citizen has to be provided as per the scheme of the Act. This means at times if the information is with another authority it becomes the duty of the P.I.O. to procure the same. In the instant case, the information is admittedly with another authority. The opponent/P.I.O. can procure the file and furnish the information or transfer the request under sec.6(3) of the R.T.I. Act.

I do not find any infirmity in the order of the F.A.A. and therefore the same is to be complied with. Complainant on her part to receive the same.

In view of all the above, I pass the following order.:-

ORDER

The Complaint is allowed. The opponent is hereby directed to furnish the information to the complainant as sought by his application dated 07/12/2010 and/or to comply the order dated 2/3/2011 passed by the F.A.A. within 20 days from the receipt of the order.

In case the information is not available the opponent/P.I.O. to see that concerned department/authority sends back the file or transfer the said request to the P.I.O. of that authority within 5 days from the date of receipt of this order with intimation to the complainant. The concerned authority to take note of the statutory period for furnishing the information.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 21st day of December, 2011.

Sd/-
(M. S. Keny)
State Chief Information
Commissioner