

GOA STATE INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Appeal No. 47/2006/Excise

Shri Gopi S. Tirodkar
R/o Colvale, Bardez - Goa.

..... Appellant.

V/s.

1. Public Information Officer
Excise Department,
Panaji - Goa.
2. First Appellate Authority
Excise Department,
Panaji - Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per G. G. Kambli)

Under Section 19 (3) of the RTI Act, 2005 (Central Act 22 of 2005)

Dated: 11/01/2007.

Adv. B. Prabhu for Appellant.

Respondent No. 1 person.

Respondent No. 2 absent.

J U D G M E N T

This is the second appeal filed by the Appellant against the Respondent under sub-section (3) of Section 19 of the Right to Information Act, 2005 (for short the RTI Act). The case of the Appellant is that he was extracting the juice from the cashew trees from the property known as Devotalicho Sarvo/Kumbharbhat belonging to the Comunidade of Colvale of which the Appellant's father was the original tenant who died in the year 1977, after obtaining the licence from the Excise Inspector, Mapusa till 1994. The Appellant states that during the year 1995, when the Appellant went to obtain the licence the Appellant was informed that the licence was transferred from his name without giving him any opportunity before transfer.

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2. The Appellant states that he presented his application under the RTI Act dated 28/6/2006 on 11/7/2006 requesting the Respondent No. 1 to provide the copies of the documents on the basis of which the licence was transferred from his name to some other's name. As the Appellant did not receive any reply from the Respondent No. 1 within the statutory period of 30 days, the Appellant preferred the first appeal before the Respondent No. 2 on 6/9/2006. In the first appeal, the Appellant stated that though the Appellant tendered the application fee of Rs.10/- at the time of the submission of application, the same was not accepted and the Appellant was told to pay the same at the time of collection of information. The Appellant states that he was called by the office of the Respondent No. 2 on 8/9/2006. The Appellant states that he was under the impression that the copies of the documents sought by the Appellant would be provided to the Appellant on 8/9/2006 and therefore he attended the office of the Respondent No. 2 on 8/9/2006, when the Appellant was handed over one envelope to be delivered to the office of the Excise Inspector, Mapusa which he did on the same day. The Appellant states that he was called in the office of the Excise Inspector, Mapusa on 11/9/2006 and 13/9/2006 but he was not provided with any information stating that the relevant file was not traceable. Since the Appellant did not receive any decision from the Respondent No. 2 within the period of 30 days as laid down in sub-section (3) of Section 19 of the RTI Act, the Appellant preferred the present second appeal praying (1) that the records and proceedings to the transfer of the licence to be called for (2) the Respondents be directed to provide the information sought by the Appellant and (3) that Appellant be compensated to the extent of Rs.2000/- for the suffering loss and mental torture and imposition of the penalty on the Respondent No. 1 at the rate of Rs.250/- per day delay till the information is provided. The notice was issued to the Respondents to file their replies and the Respondent No. 1 was also directed to show cause as to why the penalty as prayed for by the Appellant should not be imposed and the Respondent No. 2 was also directed to show cause as to why the prayer of the Appellant for awarding the compensation should not be granted.

3. The Respondents filed their replies. In their replies, the Respondent No. 1 stated that the application of the Appellant was attended to under Section 5(3) of the RTI Act on 14/7/2006 wherein the Appellant's application was endorsed by the Respondent No. 1 with endorsement to the Excise Inspector, Bardez to give

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the necessary information after acceptance of the requisite fees and that the Appellant who was present himself has volunteered to take the endorsed application to the office of the Excise Inspector, Bardez and the endorsed application was handed over by the Respondent No. 1 to the Appellant after obtaining the signature of the Appellant on the endorsed application to be given to the Excise Inspector for obtaining the necessary information. The Respondent No. 1 also further stated that the Appellant met the Excise Inspector, Bardez on the same day and the Excise Inspector informed the Appellant that no transfer of licence has been made in anybody's name of the property known as Kumbharbhat. The Respondents further stated that the Excise Inspector, Mapusa vide letter dated 18/9/2006 had informed the Appellant that no licence for extraction of cashew juice was issued to anyone in the property known as Kumbharbhat situated at Colvale from the year 1995.

4. The Appellant filed Affidavit in reply stating that he never visited the office of the Respondent No. 1 or Respondent No. 2 on 14/7/2006 and denied of having received the application of the Appellant on 14/7/2006. In the said reply, the Appellant has alleged that the Respondent No. 1 has manipulated and or fabricated his signature on the said application. The Appellant has also stated that the Respondents have not explained the reasons as to why the Appellant visited on 14/7/2006 when the application was submitted on 11/7/2006. The Appellant has also stated that he did not receive any reply from the Respondent No. 1 to his application presented on 11/7/2006 and therefore, he was compelled to file the appeal before the Respondent No. 2 on 6/9/2006. The Appellant has further alleged that when the Appellant went to present his appeal on 6/9/2006, the officials of the Respondent No. 1 started searching his original application and ultimately they located his original application and he was called on 8/9/2006. The Appellant has also stated in reply that he did not receive the letter dated 18/9/2006 from the Excise Inspector, Mapusa. The Appellant, therefore, prayed that the Respondents be directed to produce the original records pertaining to his application appeal memo and also other records from the Excise Inspector, Mapusa pertaining to the matter. Accordingly, the Respondents were directed to produce the following original records before this Commission on 12/12/2006.

1. Original application dated 28/6/2006 of the Appellant.
2. Inward and Outward register of the office of the Respondent No. 1 for the month of July, 2006.

3. Inward register of the office of the Excise Inspector, Mapusa, for July, 2006.
 4. Outward register of the office of the Excise Inspector, Mapusa, for September, 2006.
 5. Postal receipts and acknowledgement from the postal authorities whereby the letter dated 18/9/2006 was served on the Appellant or certificate of posting.
 6. Postage register for the month of September, 2006.
 7. Records and proceedings in respect of the application of the Appellant and first appeal.
5. On 12/12/2006, the Respondent No. 1 remained present and produced the original documents at Sr. No. 2, 3, 4, 6 and 7. The Respondent No. 1 did not produce original application dated 28/6/2006 of the Appellant and also the postal receipts and or the acknowledgement to prove that the letter dated 18/9/2006 was served on the Appellant or certificate of posting. When the Respondent No. 1 was asked the reasons for non production of the original application dated 28/6/2006 of the Appellant, the Respondent No. 1 stated that the original application was handed over to the Appellant and the Appellant did not deliver it to the office of the Excise Inspector, Bardez. As regards postal receipts, the Respondent No. 1 stated that the letter dated 18/9/2006 was not sent by Registered A/D or even by certificate of posting and Respondent No. 1 could not show any evidence of proof that the letter dated 18/9/2006 was either received by the Appellant or atleast posted by the Excise Inspector, Bardez. The Respondent No. 1 was therefore, directed to file the replies in the form of Affidavits of the Respondent No. 1, Respondent No. 2 and also Excise Inspector alongwith certified copies of the documents listed in the notice dated 5/12/2006 of the Commission on 27/12/2006. The Respondent No. 1 filed the replies in the form of Affidavits of both the Respondents and also that of the Excise Inspector, Bardez. Further, the Respondent No. 1 did not file the certified copies of the documents listed in the notice dated 5/12/2006 of the Commission as directed by the Commission but attached the notarized copies of the letter dated 15/11/2006 of the Excise Inspector, extract of the outward register, memorandum dated 7/9/2006, letter dated 18/9/2006, letter dated 17/10/2006 of the Excise Inspector which were earlier produced by the Respondents. The reasons for non production of the certified copies of the documents are not known.

6. The learned Advocate for the Appellant filed the written submissions on behalf of the Appellant. In the written submissions filed by the Appellant, the Appellant has stated that the property Kumbharbhat is also known as Devotalicho Sarvo bearing survey No.66/0 of the Colvale Comunidade and therefore, it is one and the same property. The Respondents have not denied the contents of the paras 1, 2, 4, 5 and 7 of the appeal memo. The Appellant states that the Respondents denied the information apparently because the Respondents issued the licence in favour of Chandrakant Tirodkar from the year 1995 under the plea that the same is issued in respect of the property Devotalicho Sarvo and not from Kumbharbhat. It is also submitted that Shri Chandrakant Tirodkar is extracting the juice from the same Kulmi where the Appellant was extracting. It is also submitted that the Respondents have not produced any evidence to prove that the Respondents handed over the original application of the Appellant on 14/7/2006 with an endorsement. The Xerox copy produced by the Respondents containing the alleged signature of the Appellant which has been denied by the Appellant is not admissible in evidence. It is submitted that the statement made by the Appellant in his Affidavit in reply dated 1/12/2006 that the Respondent No. 1 has manipulated and or fabricated the signature of the Appellant on the said application has not been denied by the Respondent No.1 similarly the allegations contained in para 4 of the Affidavit in reply of the Appellant have not been denied by the Respondents. The Appellant has further submitted that the signature of the Appellant on the application had been transplanted by putting a Xerox copy and the Respondent No. 1 has deliberately suppressed the production of the original application by taking a false plea that original application with an endorsement was handed over to the Appellant. It is also submitted that the burden lies on the Respondents to prove that the original application was handed over to the Appellant. It is also submitted that the Respondents did not show any evidence that the Appellant was intimated about the said endorsement. He submitted that the Appellant never visited the office of the Respondents on 14/7/2006. The Appellant, therefore, submitted that this Hon'ble Commission should ignore the Xerox copy of the document as at Annexure A - 1 relied upon by the Respondents. It is further submitted that the Respondent No. 1 ought to have obtained the signature of the Appellant on the Xerox copy in token of having received the original application. It is submitted by the learned Advocate for the Appellant that the statement made by

the Appellant in para 5 of the Affidavit in reply that when the Appellant went to present his appeal to the first Appellate Authority on 6/9/2006, the officials of the Respondent No. 1 started searching the original application and located the original application and therefore, they called the Appellant on 8/9/2006, has not been denied by the Respondents and therefore, it is to be construed as admitted by the Respondents.

7. In the written submissions, it is submitted by the Appellant that sub-section (3) of Section 5 of the Act does not empower the Respondent No. 1 to make such endorsement on the application of the Appellant and therefore, it has no relevance. On the contrary, the said section provides that the Respondent No. 1 should provide the reasonable assistance to the Appellant. It is also submitted that the provision of Section 6(3) of the RTI Act cannot come to the rescue of the Respondent No. 1 because the Respondent No. 1 being the PIO has no power to delegate his functions as PIO to his subordinate and PIO is responsible for the disposal of the application and cannot absolve himself in taking the plea that he has made an endorsement directing his subordinate to provide the information. The endorsement as alleged and made, if any, by the Respondent No. 1 is illegal and in contravention of the provision of the Act. It is submitted by the Appellant that the Respondent No. 1 vide memorandum dated 7/9/2006 had forwarded the copy of the application of the Appellant to the Excise Inspector, Mapusa to furnish the information to the Appellant on payment of prescribed fees. A copy of the said memorandum was also not endorsed to the Appellant by the said memorandum was put in the envelope and given to the Appellant to be delivered to the office of the Excise Inspector, Mapusa. The Appellant submits that if the original application of Appellant was sent to the Excise Inspector, Mapusa on 14/7/2006, the Respondent No. 1 ought to have made reference in the memorandum of the said application and therefore it is evident that the copy of the application of the Appellant was forwarded by the Respondent No. 1 alongwith memorandum dated 7/9/2006 and story cooked by the Respondent No. 1 that original application was handed over to the Appellant has to be disbelieved.

8. So far as the payment of fees are concerned, the Appellant submitted that at the time of submission of his original application the Appellant had offered to pay an application fee of Rs.10/- but the same was not accepted stating that the same could be paid at the time of collection of information. This statement of the

Appellant has not been denied by the Respondents and therefore, cannot make any grievance for the non-payment of fees when the office of the Respondent No. 1 had refused to accept the fee. This itself suggest that the fee was not accepted deliberately in order to take the plea of non-payment of fees.

9. The Appellant submits that he was called by the office of the Respondents on 8/9/2006 and he was handed over the envelope to be delivered to the Excise Inspector, Mapusa which the Appellant did. A copy of the said memorandum was also not given to the Appellant. It is submitted that the Respondent No. 2 did not fix any hearing on the appeal and the Appellant did not receive any decision from the Respondent No. 2. The contention of the Respondents that the memorandum was handed over to the Appellant and the Excise Inspector was directed to provide the information cannot be considered as the disposal of the appeal by the Respondent No. 2. It is submitted by the Appellant that the Respondent No. 2 has acted in total violation of the principles of the natural justice. It is submitted that when the file was produced for inspection before this Hon'ble Commission there was no decision of the Respondent No. 2 on the file of the Appeal and the Respondent No. 1 has himself assumed the powers of the Respondent No. 2 and issued the memorandum dated 7/9/2006. Hence, the Respondent No. 1 has misused and abused the powers of the first Appellate Authority. So far as letter dated 18/9/2006 as at Annexure A-6, the learned Advocate for Appellant submitted that the Appellant has not received the same and the Respondents have failed to produce any evidence before this Hon'ble Commission the receipt of the Appellant but even to show that the said letter was posted to the Appellant. It is submitted by the Appellant that the letters from the Government office/Departments even if they are sent by ordinary post they are sent under certificate of posting. Therefore, in the absence of any evidence, the allegation of the Respondents that the Appellant was informed vide letter dated 18/9/2006 should not be accepted. The burden of proof lies on the Respondents which both the Respondents have failed to discharge.

10. It is submitted by the Appellant that the Respondents are trying to say that the Appellant was orally informed time and again that no transfer of licence for extraction of juice from the cashew juice from the property of Kumbharbhat effected. The Appellant has submitted that RTI Act does not envisage the submission of information orally. The Appellant further stated that the Appellant

sought further information from the Respondent No. 1 and the Respondent No. 1 did not provide the information to the Appellant but the Appellant was provided with the letter dated 14/12/2006 of the Excise Inspector, Bardez. The Appellant submits that the Excise Inspector, Bardez has not given the reasons as to why the licence for the extraction of the juice from the cashew trees existing in the property Kumbharbhat was not issued from the year 1995. The Appellant has also stated that the Excise Inspector has also not issued the copies of the documents on the basis of which the licence was issued to Shri Chandrakant Tirodkar from the year 1996 stating that they are not available in the office. Therefore, the Appellant has alleged that the property Kumbharbhat and Devotalicho Sarvo for which the licence was issued to Shri Chandrakant Tirodkar is one and the same property. The Appellant submitted that if there exists two separate properties two separate licences ought to have been issued and therefore, the Respondents have deliberately withheld the disclosure of the information.

11. The Appellant submitted that the Respondent No. 1 has failed to prove that the Respondent No. 1 has provided the information to the Appellant within the statutory period. Similarly the Respondent No. 2 have failed to prove that the appeal filed by the Appellant is disposed off by the Respondent No. 2 within the statutory period after following the procedure. It is submitted that the PIO has no power to delegate his powers to any subordinate nor APIO nor subordinate officer can assume the functions of the PIO under the RTI Act and dispose off the application. Similarly, it is submitted by the Appellant that first Appellate Authority has also no power to delegate his functions to the PIO which has been done in the present case. It is submitted by the Appellant that the Excise Inspector in his Affidavit in reply at para 1 has stated that the Appellant left the office without giving the application to his office whereas this averment is not contained in the earlier reply filed by the Excise Inspector therefore, it is clear that it is an afterthought to cover the false allegations of the Respondent No. 1. It is also submitted by the Appellant that the Respondents have failed to prove that the Excise Inspector, Mapusa is a separate PIO or the separate Public Authority under the RTI Act and therefore, the plea taken by the Respondents that the application was transferred under Section 6 (3) of the RTI Act cannot be accepted.

12. On perusal of the records, it is seen that the Appellant has presented an application to the Respondent No. 1 on 11/7/2006 seeking the information under the RTI Act. The case of the Respondent No. 1 is that the said original application of the Appellant was handed over with an endorsement to the Appellant on 14/7/2006 which the Appellant denies. The Respondent No. 1 has produced a Xerox copy of the application dated 28/6/2006 of the Appellant again with Xerox endorsement and Xerox copy of the signature. As rightly pointed out by the learned Advocate for the Appellant that the Xerox copy is not at all admissible in evidence more so because it is strongly objected by the Appellant. Therefore, we cannot accept the said Xerox copy of the documents as at Annexure A-1 produced by the Respondent No. 1. The Respondents have stated that the Appellant was being informed time and again orally that no transfer of licence was made for extraction of juice from the property Kumbharbhat. The Act does not envisages of providing information orally. We fail to understand as to why the Respondent No. 1 did not inform the Appellant so, in as many words in writing. Section 7 of the Act lays down the procedure for the disposal of the request. In terms of sub-section (3) of the Section 7 of the RTI Act, the PIO has to sent an intimation to the person making the request giving details of further fees representing the cost of providing the information together with calculation made to arrive at on the amount in accordance with the provision of the Act. The Respondent No. 1 has failed to follow the procedure laid down in Section 7 of the Act which is of mandatory in nature. Therefore, Respondent NO. 1 has contravened and violated the provision of the Section 7 of the Act. It is also not clear as to how the Respondent No. 1 has made an endorsement to the Excise Inspector giving directions to provide the information to the Appellant under sub-section (3) of Section 5 of the RTI Act when no such powers are available. The duties and the responsibilities of providing the information is that of the PIO i.e. Respondent No. 1 and he has not empowered to delegate his duties and functions to APIO or subordinate officers. Being so, the endorsement made if any as alleged by the Respondent No. 1 is totally illegal and uncalled for. In fact, the Respondent No. 1 ought to have obtained the information from the Excise Inspector, Bardez and provided the same to the Appellant within the statutory period of 30 days which the Respondent No. 1 has failed. The other ground taken by the Respondent No. 1 that the application was forwarded to the Excise Inspector under Section 6(3) of the RTI Act also cannot be accepted. The Excise Inspector, Bardez is the APIO as can be seen from his

own Affidavit in reply and not a separate PIO or Public Authority. Section 6(3) of the RTI Act contemplates the transfer of application to other public authority and not to the APIO or any subordinate officer of the PIO. Therefore, the contention of the Respondents that the application was transferred under Section 6(3) of the RTI Act cannot be accepted. The Appellant had submitted that the Respondents in his memorandum dated 7/9/2006 has forwarded the application of the Appellant to the Excise Inspector, Bardez with a directions to provide the required documents to the Appellant and no reference has been made to the endorsement made if any earlier. There is some substance in the statement of the Appellant as otherwise the Respondent No. 1 should have made the reference to the earlier endorsement. It is also pertinent to note that the Appellant in his Affidavit in reply date 1/12/2006 in para 3 has alleged that the Respondent No. 1 has manipulated and or fabricated his signature on the said application, this has not been denied by the Respondents in their Affidavits in reply. Similarly, it has also been alleged in para 6 of the Affidavit in reply by the Appellant that when the Appellant went to present his appeal, the officials of the Respondent No. 1 started searching his original application and ultimately located the original application and the Appellant was called on 8/9/2006 which is also not denied by both the Respondents in their replies. Therefore, it is difficult to believe the Respondent No. 1 that the original application of the Appellant with an endorsement was handed over to the Appellant. The burden lies on the Respondent No. 1 to prove that the application of the Appellant is disposed off within the statutory period which the Respondent No. 1 has failed to discharge.

13. Coming now to the first appeal filed by the Appellant on 6/9/2006 before the Respondent No. 2, it is an admitted fact that the Appellant was called on 8/9/2006. The Appellant attended the office of the Respondent No. 2 on 8/9/2006 and the Appellant was handed over an envelope, which is to be delivered to the Excise Inspector, Bardez which the Appellant did. The case of the Respondents is that the Excise Inspector, Bardez was directed to furnish the information to the Appellant and the Excise Inspector, Bardez orally provided the information to the Appellant. The copy of the memorandum was also not endorsed to the Appellant. So the Appellant was not aware of its contents till the same was produced before this Commission by the Respondents. We fail to understand how the first Appellate Authority can delegate his powers to the APIO. No order has been produced before us passed by the Respondent No. 2

on the first appeal filed by the Appellant. When the original file was produced before the Commission by the Respondent No. 1, there was no decision of the first Appellate Authority on the file and the Respondent No. 1 himself has issued the memorandum dated 7/9/2006. This is clearly misuse and abuse of the powers of the Appellate Authority by the Respondent No. 1. In fact, the Respondent No. 2, being the Appellate Authority, ought to have passed an appropriate order after hearing the Appellant which could have been communicated by the Respondent No. 1. The same has not been done by the Respondent No. 2 and therefore the Appellant has rightly knocked at the doors of this Commission by way of second appeal.

14. Turning now to the letter dated 18/9/2006 alleged to have been sent by the Excise Inspector, Bardez, no receipt nor any copy of the certificate of posting has been produced by the Respondents of having received the said letter dated 18/9/2006 by the Appellant. No postal receipt has been produced in token of having posted the said letter to the Appellant. Therefore, it has to be construed that the Appellant has not been provided with any information or reply by the Respondents either on his application or of the appeal. The contention of the Respondents that the Appellant was informed orally cannot be accepted as the Respondents could have replied or given the letters to the Appellant when he visited office of the Excise Inspector, Bardez on several occasions. The Respondent No. 1 has miserably failed to prove that the information sought by the Appellant has been provided within the statutory period. On the contrary, the Appellant has been made to run from pillar to post as he was called in the office of Respondent No. 2 at Panaji on 8/9/2006 to do the job of postman of carrying the envelope from the office of the Respondent No. 2 to the Excise Inspector, Bardez and thereby putting Appellant into harassment, loss and mental torture.

15. We have already held the view in several cases that the role of the APIO is limited in receiving the application and appeals and forward the same to the concerned PIO and Appellate Authorities as the case may be. The APIO has not been empowered to take any decision on the application seeking information. The course adopted and followed by both the Respondents is totally in contravention and violation of the provision of the RTI Act. We are fully satisfied that the Respondents have not acted bonafidely as the Appellant was harassed.

16. In view of the above, we pass the following order: -

ORDER

The appeal is allowed. The Respondent No. 1 has to give specific information to the Appellant within 10 days whether any auction for extraction of cashew juice and distilling cashew liquor in respect of the property known as "Devotalicho Sarvo" alias Kumbharbhat belonging to Comunidade of Colvale is given to anybody and supply to the Appellant the details of the area and boundaries of both cashew zones viz. Revora 1A and Revora 3rd zone. He should also state when Revora 3rd zone is last auctioned and whether the Excise Department is aware of any juice is extracted from the cashew apples from that zone now. Respondent No. 1 also is required to furnish details when the zone Revora 1A was formed and earlier to which zone was it part of.

So far as the penalty under Section 20 of the Act is concerned on the Respondent No. 1, we impose the penalty of Rs.5000/- though the penalty if calculated at the rate of Rs.250/- per day delay comes to much more. The said penalty has to be recovered from the salary of the Respondent No. 1 in two equal installments for the month of February and March, 2007. The Director of Accounts is directed to recover the said penalty and credit it in the appropriate receipt head.

(G.G. Kambli)
State Information Commissioner, GOA.

(A. Venkataratnam)
State Chief Information Commissioner, GOA.