

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 897 of 2012

1. S.K.Shrivastava, S/o Lt. J.L. Shrivastava, age 61 years, Retired Deputy Director, Department of Fisheries, R/o Dr. A.K. Verma Doctors Colony Saraswati Nagar Pratap Chowk Distt. Bilaspur (CG)

---- Petitioner

Versus

1. State Information Commissioner, Chhattisgarh, office of the State Information Commission, Nirmal Chhaya Bhawan, Meera Datar Road, Shankar Nagar, Raipur
2. Joint Director Fisheries-cum- First Appellate Authority under the provisions of Right to Information Act, 2005, Directorate of Fisheries, Near Railway Crossing, Telibandha, Raipur (CG)
3. Deputy Director Fisheries-cum- Chief Executive Officer, Fish Farmer Development Authority / Public Information Officer, Department of Fisheries, District Durg (CG)
4. Inderchand Soni, Social Worker, R/o Jawahar Chowk, Durg, District Durg (CG)

---- Respondents

For Petitioner.

Mr. A.K. Prasad, Advocate with

Mr. Rishi Mahobia, Advocate.

For Respondent No.1

Mr. S.S. Tekchandani, Advocate

For Respondent No.2 & 3

Mr. Gary Mukhopadhyaya, Govt. Adv.

For Respondent No.4.

Mr. Vikas Bhaskar, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

16/10/2015

1. At the relevant time the petitioner was posted as the Public Information Officer & Deputy Director, Department of Fisheries, Govt. of C.G., Raipur. On 22.11.2010 respondent No.4, an information seeker, filed an application before the petitioner under the Right to Information Act, 2005 (henceforth 'the Act of 2005') seeking certified copies of the applications

made under the Act of 2005 from 15.10.2005. The petitioner refused to give such information to respondent No.4 on the ground that information are related to FIR No.489/2010 which stands exempted from disclosure under Section 8 (1) (h) of the the Act of 2005. Feeling aggrieved by this order of petitioner, respondent No.4 preferred an appeal before the first appellate authority and the same was also dismissed vide order dated 11.3.2011 against which respondent No.4 had preferred second appeal before the State Information Commission Chhattisgarh, Raipur. The Commissioner vide order dated 1.10.2011 allowed the second appeal and directed the petitioner to supply the entire information free of cost. The Commissioner had came to conclusion that unnecessary delay was caused by the petitioner in supplying requisite information to the information seeker and therefore imposed penalty of Rs.5,000/- on the petitioner as per provisions of Section 20 (2) [sic 'Section 20 (1)'] of the Act of 2005. The petitioner has further been directed to pay Rs.500/- to respondent No.4 towards mental agony. It is this order which has been challenged by the petitioner in this writ petition.

2. Counsel for the petitioner submits that though the petitioner has raised various grounds to assail the order impugned but he is confining his argument to the extent that before passing the impugned order of penalty any opportunity of hearing has not been afforded to the petitioner. Though presence of the petitioner has been marked in the impugned order, but infact he was not present and even no notice was served on him before imposing penalty. He further submits that after the impugned order, which was passed after the retirement of petitioner, necessary information has already been supplied to the information seeker free of cost by the successor of the petitioner. He further submits that the petitioner has acted reasonably & diligently and therefore delay in

supplying relevant information to the information seeker cannot be attributed to him. He further submits that the petitioner stood retired on 31.7.2011 and now it is difficult for him to pay penalty of Rs.5,000/- & Rs.500/- to respondent No.4 in as many as twelve cases. He further submits that respondent No.4 is habitual information seeker of District Durg and he has filed about 3000 applications under the Act of 2005. Reliance is placed on the decision of the Division Bench of High Court of Delhi dated 29.3.2012 passed in LPA No.777/2010, parties being Anand Bhushan vs. R.A. Haritash.

3. On the other hand, supporting the impugned order it has been argued by Shri Tekchandani & Shri Bhaskar that the impugned order is strictly in accordance with law and there is no illegality or infirmity.
4. I have heard counsel for the parties and perused the impugned order.
5. Looking at the entire factual aspect of the case, since very inception the act of the petitioner in not supplying requisite information to respondent No.4 cannot be said to be illegal and contrary to law. Since the information sought for by the information seeker pertained to FIR No.489/2010, the petitioner might have been under the impression as to the bar created by Section 8 (1) (h) of the Act of 2005 though based on a wrong notion, but the denial on his part cannot be termed as malafide. This refusal by the petitioner has also been approbated by the first appellate authority against which the respondent No.4 preferred the second appeal before the State Information Commission. While passing the impugned order in the second appeal preferred by respondent No.4, the Chief Information Commissioner has held that act of the petitioner in non-supply of information to respondent No.4 in the garb of Section 8 (1) (h) & (g) of the Act of 2005 smacks malafide, therefore he is liable to pay

penalty of Rs.5,000/- in addition to Rs.500/- towards mental agony undergone by respondent No.4. Thus no malafide on the part of the petitioner is visible and whatever delay has occurred in supplying information to respondent No.4 was bonafide. The petitioner has tried its best to make the same available to respondent No.4 and at no point of time he had nurtured any malafide intention in not supplying information to respondent No.4 and therefore the petitioner should not be made liable to pay the penalty as has been ordered by respondent No.1.

6. Having thus noted the facts described above and the provision of law pressed into service by counsel for the petitioner, for a trivial technical flaw on the part of the petitioner, he cannot be made to pay a heavy cost in the form of penalty etc. It would be relevant to note here that at the time of passing of the order impugned, the petitioner has already retired from service and in the efflux of time the relevant information sought for by respondent No.4 has already been supplied to him. In this view of the matter, the imposition of penalty by the impugned order appears to be too harsh and is required to be reduced to Rs.500/-. Order accordingly. In addition to this, the impugned order carrying a direction for the petitioner to pay Rs.500/- to respondent No.4 towards mental agony being an unjust one is also set aside.

7. With the observations and directions as above, the petition is disposed of.

Sd/-
(Pritinker Diwaker)
Judge

roshan/-